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Title: Great expectations: A qualitative examination of restorative justice practices
and victim interaction

Date: October 2012

Originally published as: University of Chester PhD thesis

Example citation: Armstrong, J. R. B. (2012). *Great expectations: A qualitative
examination of restorative justice practices and victim interaction*. (Unpublished
doctoral dissertation). University of Chester, United Kingdom.

Version of item: Submitted version

Available at: <http://hdl.handle.net/10034/311263>

Great Expectations: A Qualitative Examination of Restorative Justice Practices and Victim Interaction

Thesis submitted in accordance with the requirements of the University of Chester for
the degree of Doctor of Philosophy by:

Jac Robyn Benjamin Armstrong.

October

2012

Author's Declaration

I declare that this thesis is my own work and has not been submitted for an award other than this or at another higher education institution.

Signed

Jac Robyn Benjamin Armstrong

Date

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Abstract

This thesis presents original empirical research concerning a restorative justice practice currently operating within England. Specifically, it examines the expectations and experiences of victims participating in a restorative practice. It establishes the extent to which victims' expectations may impact upon their experiences of the restorative justice process.

Throughout this research, original empirical data is presented which demonstrates that victims possess a limited understanding of restorative principles and practices, which persists despite preparatory meetings. This research suggests victims place almost exclusive reliance upon gatekeepers of the process, specifically the police or restorative facilitator, in both the formation of their expectations of the process and in their decisions to participate. This thesis argues that the existence of restorative practices as complex interactionary processes enables victims to experience aspects of the process negatively, whilst continuing to view the process as beneficial. It is submitted that negative experiences can arise from an expectation-reality gap, which the preparatory meetings fail to rectify. Throughout the restorative process, this research demonstrates that victims continue to possess a punitive perspective and continue to rely upon aspects of the traditional criminal justice system and courtroom imagery. Such reliance exists in contradiction to central themes of restorative justice theory, including victim rejection of an empowered decision making role during the process, and the irrelevance of offender remorse.

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Acknowledgements

This thesis could not have been completed without the help, guidance and support provided by my supervisor, Dr. Kathryn Dutton, to whom I am extremely grateful.

The help and encouragement I received from my friends and family throughout the course of this work was invaluable. I am grateful to Gladstone's Library for awarding me a residential research scholarship, and to The Law School, University of Chester for their continued support.

Finally, I am indebted to the people upon whom this research relied. Those who allowed me to work alongside the restorative justice scheme and all those who agreed to participate in this work. Without their time and responses this research would not exist.

Chapter I

Introducing Restorative Justice Theory and Practice: Latent Ambiguity and a Narrow Research Agenda

1. Introduction

This introductory chapter outlines the aims and objectives of this thesis and details the inspiration and rationale for this research (within section 3). The points relied upon within the rationale are supported and developed within an introductory literature review (section 4). Section 4 provides an initial review of relevant literature, identifying the limitations of existing work. Further chapters of the thesis are organised thematically, addressing empirical data alongside relevant literature in accordance with the analytical framework adopted in this thesis. This review demonstrates (within section 4,i) the latent ambiguity which exists within theoretical debate regarding restorative justice and the continued absence of any universal definition. Such ambiguity is problematic as without clear definitions of restorative theory and practice, victims may remain incapable of forming accurate expectations which can then impact negatively upon their experiences of the process. In this context the modification of the restorative paradigm identified in this chapter may result in commodification with direct implications for the provision of services and their impact upon victims. Furthermore, the role of restorative justice within the societies in which it originates is examined, in light of the potential commodification of the philosophy discussed within subsequent sections. Section 4, iii then examines the implementation of restorative theory. It identifies the menagerie of practices operating under the label of restorative justice and examines previous justifications for the greater implementation of restorative practices within the criminal

justice system. Section 4, iv then discusses the commodification of restorative justice theory through its implementation within schemes which appear to select individual aspects of restorative philosophy to implement. The implications of this selection and subsequent impact such ‘culture carriers’ have upon victim participants is explored. Finally section 4,v examines contemporary empirical data regarding the benefits of restorative justice, identifying the limitations within extant knowledge and in so doing, providing further justification for this research. Finally, the chapter sets out the thesis structure within section 5 and concludes with a brief summary (section 6).

2. Research Aim

The central aim of this research was to examine the expectations and experiences of victims participating in a restorative justice practice, to determine the extent to which victim expectations of restorative justice practices may impact upon their experiences. Specifically, this research determines the extent to which a nexus between victim expectations and their experiences of restorative practices exists. In pursuit of this, a secondary objective of the work was to provide a detailed qualitative examination of victim expectations and their formation. This qualitative examination is intended to develop extant knowledge regarding victim experiences of restorative justice practice and identify those aspects of the process which are valued by victims and the reasons why such aspects were valued.

3. Rationale

The aims of this research were determined in response to the limitations of extant work. Despite indications that expectations may impact on experiences,¹ little empirical

¹Office for Criminal Justice Reform. (2007). *Conditional Cautions: Key findings from a victim satisfaction survey*.
<http://www.cjsonline.gov.uk/downloads/application/pdf/Victim%20satisfaction%20Dec%2007.pdf> ; Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders, Green Paper Evidence report. December 2010, Ministry of Justice, London: Stationary Office.

evidence exists specifically addressing restorative justice practices. Although numerous empirical studies examine the effects of restorative justice,² few have addressed the impact of victim expectations.³

Existing empirical research focuses primarily upon output measurements such as victim satisfaction or offender recidivism.⁴ Victim satisfaction with restorative justice is repeatedly shown to be higher than in traditional criminal justice systems.⁵ Due to reliance upon service delivery criteria and output measurements, the majority of empirical data is of a quantitative nature.⁶ Whilst not denying the value of such studies, they are of limited use in establishing participants' experiences of the process or the extent to which such experiences correspond with those substantial claims of restorative theory.

Whilst a range of work examines experiences of participants, few studies have specifically addressed victim expectations.⁷ It is submitted that victim expectations occupy an important area of research due to their potential to impact upon participants subsequent experiences. Previous initiatives designed to promote victim involvement in the criminal justice system have evidenced negative results, resulting from the erroneous elevation of

² Sherman, L., H. Strang, et al. (2005). Effects of face-to-face restorative justice on victims of crime in four randomized, controlled trials. *Journal of Experimental Criminology*. 1, 367-395.; Witvliet, C., Worthington, et al. (2008). Retributive justice, restorative justice, and forgiveness: An experimental psychophysiology analysis. *Journal of Experimental Social Psychology*. 44(1), 10-25.

³ Wemmers, J. (2002). *Victims' Experiences With, Expectations and Perceptions Of Restorative Justice: A Critical Review of the Literature*: International Centre for Comparative Criminology, Universite de Montreal

⁴ Latimer, J., C. Dowden, et al. (2005). The Effectiveness of Restorative Justice Practices: A Meta-Analysis. *The Prison Journal*, 85(2): 127-144.; Strang, H. (2000). Victims and Restorative Justice: The Canberra reintegrative shaming experiment. *Criminology*. Acton, ACT, Australian National University.

⁵ Umbreit, M. (1994). Victim Meets Offender: The impact of restorative justice and mediation. Monsey, NY, Criminal Justice Press; Hoyle, C., Young, R., & Hill, R. (2002). *Proceed with Caution: An Evaluation of the Thames Valley Police Initiative in Restorative Cautioning*. York: Joseph Rowntree Foundation; Vos, B., Umbreit, M., and Coates, R. (2006) Victim offender mediation: An evolving evidence-based practice. In D. Sullivan and L. Tifft (eds.) *Handbook of Restorative Justice A Global Perspective* (52-61). London: Routledge.

⁶ Umbreit, M. (1999). Victim-offender mediation in Canada: The impact of an emerging social work intervention. *International Social Work*. 42(2), 215-227.; Kuo, S., D. Longmire, et al. (2010). An empirical assessment of the process of restorative justice. *Journal of Criminal Justice*. 28, 318-328.

⁷ Morris, A. Maxwell, G. (eds.), (2003). *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* Oxford: Hart Publishing.

victim expectations beyond that which the initiatives are capable of delivering.⁸ Furthermore, past studies addressing victim expectations are methodologically limited, measuring victim expectations following the conclusion of their restorative process.⁹ Within previous research studies the formation of expectations by victims is often neglected.¹⁰ The formation of victim expectations is important due to the potential for erroneous or unfulfilled experiences to impact negatively upon their experiences.

Although a limited number of studies address victim expectations,¹¹ no study adequately investigates the origins of these expectations. It is suggested that the formation of expectations by victim participants is an important area in need of further investigation due to its potential to explain the consistency of victim expectations across different restorative practices.¹² Furthermore, a fuller in-depth examination of the expectations held by victims, may offer an explanation into those low levels of victim participation.

⁸Erez, E., L. Roeger, & F. Morgan. (1994). *Victim impact statements in South Australia: An evaluation*. Adelaide: South Australian Attorney General's Department.; Sanders, A., C. Hoyle, R. Morgan, & E. Cape. (2001). Victim impact statements: Don't work, can't work. *Criminal Law Review*, 447-458.

⁹For example Umbreit, M. (1994). *Victim Meets offender* claims to utilise pre-test and post-test data but pre-test data is not available for all the groups in his study. Additionally what is described as 'pre-test' did not occur prior to the mediation, thus in reality the design employed an after only experiment. Additional studies which fail to examine pre-mediation data includes: Marshall, T., & Merry, S. (1990). *Crime and accountability: Victim/Offender mediation in practice*. London: Her Majesty's Stationary Office.; Latimer, J., Dowden, C., & Muise, D. (2001). *The effectiveness of restorative justice practices: A meta-analysis*. Ottawa: Research and Statistics Division, Department of Justice Canada.; Morris, A., Maxwell, G., & Robertson J. (1993). Giving victims a voice: A New Zealand experiment. *Howard Journal of Criminal Justice*, 32(4), 301-321.; Umbreit, M., & Roberts, A. (1996). Mediation of criminal conflict in England: An assessment of services in Coventry and Leeds. Available online at http://www.cehd.umn.edu/ssw/rjp/resources/Research/Mediating_Criminal_Conflict_England.pdf

¹⁰Abrams, L. & Umbreit, M. (2006). Young Offenders speak about meeting their victims; implications for future programmes. *Contemporary Justice Review*, 9 (3), 243-256.

¹¹Dignan, J. (1992). Repairing the damage. *British Journal of Criminology*, 32(4), 453-473.; Wemmers, J., & Van Hecke, T. (1992). *Strafrechtelijkedading (victim-offender mediation)*. Wetenschappelijk Onderzoek- en Documentatiecentrum, Ministerie van Justitie, K23.; Strang, H. (2000). Victims and restorative justice: The Canberra reintegrative shaming experiment. Unpublished doctoral dissertation, Australian National University.; Latimer, J., Dowden, C., & Muise, D. (2001). *The effectiveness of restorative justice practices: A meta-analysis*.

¹²Dignan, J., & Lowey, K. (2000). *Restorative Justice Options for Northern Ireland: A Comparative Review*. Research Report 10. March. Belfast, Northern Ireland: Criminal Justice Review Group. Downloaded 5 December 2005.; Daly, K. (2001) Conferencing in Australia and New Zealand: variations, research findings and prospects. In A. Morris, & G. Maxwell, (eds.) (2001). *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Hart: Oxford.; Van Ness, D. & Strong, K. (2010). *Restoring Justice: An introduction to restorative justice*. London: Anderson Press.; Daly, K. (2002). Restorative justice: The real story. *Punishment & Society*, 4(1), 55-79.; Gray, P. (2003). *An Evaluation of the Plymouth restorative justice programme*. Department of social Policy and Social Work, University of Plymouth

Those limited studies suggest victim expectations remain consistent across diverse implementation, victim satisfaction varies considerably.¹³ Victims participating in shuttle mediation schemes experienced lower satisfaction ratings as opposed to participants in schemes employing direct mediation methods.¹⁴ The potential impact of these findings is demonstrated in a study of the Thames Valley Initiative, which recorded that victims who received written apologies were less satisfied than those who participated in more direct methods of mediation.¹⁵ Such studies demonstrate that variation exists within victim experiences of different restorative practices. However, such variation is not fully explored through previous quantitative studies. It is suggested that unfulfilled expectations held by victims may explain such differences in satisfaction. Those practices described as being 'less restorative'¹⁶ may result in poorer victim experiences due to the erroneous expectation that they will deliver the same benefits as 'fully restorative'.¹⁷ Past studies addressing participant experiences can be seen to be limited in a number of important ways. These limitations include the pre-dominance of quantitative data analysis and the absence of qualitative investigation, the focus of research upon single examples of restorative justice

¹³ Davis, R., Tichane, M., & Grayson, D. (1980). *Mediation and Arbitration as Alternative to Prosecution in Felony Arrest Cases, An Evaluation of the Brooklyn Dispute Resolution Center*. New York, NY: VERA Institute of Justice.; Coates, R. & J. Gehm (1985). *Victim Meets Offender: An Evaluation of Victim-Offender Reconciliation Programs*. Valparaiso, Indiana: PACT Institute of Justice.; Perry, L., Lajeunesse, T., & Woods, A. (1987). *Mediation Services: An Evaluation*. Winnipeg, Manitoba, CAN: Manitoba Attorney General: Research, Planning and Evaluation.

¹⁴ Bazemore, G., & Green, D. (2007). "Yardsticks" for Victim Sensitive Process: Principle-Based Standards for Gauging the Integrity of Restorative Justice Process. *Victims and Offenders*. 2(3), 289-301.; Bonta, J., Wallace-Capretta, S., & Rooney, J. (1998). *Restorative justice: An evaluation of the restorative resolutions project*. Ottawa, Ontario: Solicitor General Canada.; Strang, H., & Sherman, L. W. (2003). *Repairing the harm: Victims and restorative justice*. *Utah Law Review*. 1. University of Utah.

¹⁵ Hoyle, C. (2002). Securing Restorative Justice for the 'Non-Participating' Victim. In C. Hoyle & R. Young, (eds.), *New Visions of Crime Victims* (p. 97-131). Oxford: Hart Publishing.

¹⁶ Lilles, H. (2001). Circle sentencing: Part of the restorative justice continuum. In A. Morris & G. Maxwell. *Restorative justice for juveniles: Conferencing, mediation and circles* (pp. 161-179). Oxford: Hart Publishing.; Umbreit, M. (1994). Victim sensitive communication with offenders: A restorative justice continuum Victim Offender Mediation. *The journal of the International Association for Victim Offender Mediation*. 5(3), 7-8.

¹⁷ Van Ness, D. (2002). Creating Restorative Justice Systems. In L. Walgrave (ed.), *Restorative Justice and the Law* (pp. 130-149). Devon, UK: Willan Publishing.; Van Ness, D. (2002). The Shape of Things to Come: A Framework for Thinking About a Restorative Justice System. In G. Elmar, M. Weitekamp & H. Kerner (eds.), *Restorative Justice: Theoretical Foundations* (pp. 1-20). Devon, UK: Willan Publishing.; McCold, P. (2000). Toward a Holistic Vision of Restorative Juvenile Justice: A Reply to the Maximalist Model. *Contemporary Justice Review*. 3(4), 357.

implementation and a narrow research agenda focused upon superficial ‘output measurements’.¹⁸ Despite numerous empirical publications devoted to restorative justice, qualitative investigations into the victim perceptions and experiences of the process are few in number and often rely upon providing limited information regarding each case in an almost anecdotal manner.¹⁹

4. Introductory Literature Review: Restorative Justice Theory

This initial literature review details the theory and practice of restorative justice, expanding upon the arguments presented within the rationale, and thus providing further justification for this research. Additional literature is discussed within the subsequent chapters, presented alongside the empirical data of this thesis, to inform data analysis and theory development. This section focuses upon the philosophy of restorative justice theory, its development and its persistent latent ambiguity is established, due to its potential to impact upon restorative practice. It is suggested that for victims to form accurate expectations of the process in which they engage, a clear definition of the practice, philosophy and objectives is necessary. Without a clear definition of the theory and the objective of restorative practices, victims will remain incapable of forming accurate expectations, subsequently impacting negatively upon their experiences.

¹⁸Young, R. (2001). ‘Just Cops Doing ‘Shameful’ Business? Police-led Restorative Justice and the Lessons of Research’. In A. Morris, & G. Maxwell (eds.), *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (pp. 195-226). Oxford-Portland Oregon: Hart Publishing.; Strang, H. (2001). Justice for Victims of Young Offenders: The Centrality of Emotional Harm and Restoration. In A. Morris, & D. Maxwell (eds.), *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (pp. 183-193). Oxford-Portland Oregon: Hart Publishing.; Marshall, T., & Merry. S., (1990). *Crime and Accountability – Victim Offender Mediation in Practice*. London: Home Office, Her Majesty’s Stationary Office. 16-17; Pawson, R. & Tilley, N. (1997). *Realistic Evaluation*. London: Sage.; Launey, G. (1987). Victim-offender conciliation. In B. McGurk, D. Thorton, & M. Williams (eds.), *Applying psychology to imprisonment: Theory and practice* (pp. 274-300). London: Her Majesty’s Stationary Office.

¹⁹Crosland, P., & Liebmann, M. (eds.), (2003). *40 cases: Restorative Justice and Victim-offender Mediation*, Mediation UK.; Dussich, J. & Schellenberg, J. (2010). *Promise of restorative justice: New approaches for criminal justice and beyond*. Boulder, CO: Lynne Rienner Publishers, Inc.

Within section 4.i, theoretical literature is initially examined, providing a description of restorative justice theory, its origins, central debates and latent ambiguity. This moves to discussion of the various practices operating under the restorative justice label, resulting from an absence of definitive description (section 4. iii). Finally, empirical research addressing restorative practices are reviewed and their limitations established (section 4.v).

i. (Re)Discovering Restorative Justice

This section of the literature review provides an introduction to restorative justice, its origins and central theory in addition to describing the inability of restorative theorists to determine an accepted definition. Restorative justice is advocated as an alternative approach to traditional Western Justice Systems.²⁰ The concept originates from the informal conflict resolution models of indigenous societies²¹ and small ethnic and religious communities.²²

Restorative Justice provided a method of social control within indigenous communities prior to the establishment of a more contemporary formal legal system. It represented a different theoretical framework for responding to transgressions against members of the community where incarceration or corporal punishments were not viable options, due to the environment in which such societies existed. Rather than defining the State as the victim, restorative justice postulates criminal behaviour is first and foremost a conflict between individuals, with the state (or community) occupying a lesser position as a secondary victim. This contrasts to the position of the State within the traditional western

²⁰ Wenzel, M., Okimoto, T., Feather, N., & Platow, M. (2008). Retributive and Restorative Justice. *Law and Human Behaviour*. 32(5), 375-389.

²¹ Grönfors, M (1992). Mediation: A Romantic Ideal or a Workable Alternative. In H. Messmer & H.-U. Otto (eds.), *Restorative Justice on Trial: Pitfalls and Potentials of Victim-Offender Mediation: International Research Perspectives*. Dordrecht, NETH: Kluwer Academic Publishers, pp. 419-430.

²² Hadley, M. (2006). Spiritual Foundations of restorative justice. In D. Sullivan & L. Tifft (eds.), *Handbook of Restorative Justice, A Global Perspective* (pp.174-185). London and New York: Routledge. Taylor & Francis Group.

criminal justice process.²³ Restorative practices such as family group conferencing in New Zealand not only provided a mechanism for addressing behaviour which transgressed the social norms of that community but additionally provided a process of recognising the damage caused to the transgressed (victim). As such the traditional participants within restorative justice practices appear to be more widely defined than those in contemporary criminal justice practices.²⁴ Current restorative practices operating within the criminal justice process of England and Wales require the occurrence of a criminal offence before any process can be commenced. As such the ‘transgressed person’ is restricted to victims, traditionally defined. The necessary requirement for participation in this restorative practice was the commission of a recognised criminal offence and an identifiable victim, or someone who is capable of representing such interests. However, the proliferation of restorative practices outside of the remit of the criminal justice system, such as those practices implemented within schools or social welfare institutions,²⁵ demonstrates the extent to which participants and their subsequent experiences remain particularly specific to the individual practice. Within this research an identifiable victim who was the direct victim of the offenders’ actions was involved in the restorative process. Surrogate victims, or corporate representatives were not involved within any of the restorative practices which were observed and which form the basis of the empirical data of this thesis.

²³Umbreit, M. (1994). *Victim Meets Offender, The Impact of Restorative Justice and Mediation*. Monsey, USA: Willow Tree Press.

²⁴Bazemore, G., & Schiff, M. (2001). *Restorative community justice: repairing harm and transforming communities*. Anderson; Bazemore, S. G., & Schiff, M. (2005). *Juvenile justice reform and restorative justice: Building theory and policy from practice* (p. 17). Portland, OR: Willan; Achilles, M., & Zehr, H. (2001). Restorative justice for crime victims: the promise, the challenge. *Restorative and community justice cultivating common ground for victims, communities and offenders*. Cincinnati, OH: Anderson.

²⁵Cameron, L., & Thorsborne, M. (2001). Restorative Justice and School Discipline: Mutually Exclusive?. In H. Strang, & J. Braithwaite. *Restorative Justice and Civil Society* (pp. 180-194). Oxford, UK: Oxford University Press.

The restorative justice programme in which this research was conducted operated within the criminal justice system as a diversionary measure.²⁶ As such the individuals involved as victim participants were the same as those victims who are involved with the formal, traditional criminal justice process. Such a definition would therefore be restricted to individuals who have experienced some transgression against their rights which is recognised as constituting a criminal offence within England and Wales. It should be recognised however that restorative practices are regularly implemented outside the remit of the criminal justice system and subsequently involve a much wider definition of wronged persons and transgressors. As the practice in which this research was undertaken was firmly integrated as a diversionary measure within the criminal justice process the definition of victim and offender would necessarily be more restrictive. Furthermore, the perceived needs of those ‘victims’ was specific to ‘victims’ as defined through reference to the traditional criminal justice system.²⁷ The subject of numerous research studies and reports, the most commonly identified needs of such victims includes assessing a multitude of factors including increasing victim satisfaction, and alleviating the emotional/physical effect of the crime upon victims.²⁸ Additionally, commonly cited needs of victims includes reduction in post-traumatic stress, removal of persisting feelings of anger and fears about the offender and the promotion of

²⁶ Braithwaite, J. (1999). Restorative Justice: assessing optimistic and pessimistic accounts. *Crime and Justice*, 25, 1-127

²⁷ Von Hentig, H. (1948). *The Criminal and His Victim: studies in the sociobiology of crime*. New Haven, CT: Yale University Press.

²⁸For victim satisfaction see; Strang, H. (2002). *Repair or revenge: Victims and restorative justice* (p. 63). Oxford: Clarendon Press. For offender satisfaction; Latimer, J., Dowden, C., & Muise, D. (2005). The effectiveness of restorative justice practices: A meta-analysis. *The Prison Journal*, 85(2), 127-144. For offender recidivism; Levrant, S., Cullen, F. T., Fulton, B., & Wozniak, J. F. (1999). Reconsidering restorative justice: The corruption of benevolence revisited?. *Crime & Delinquency*, 45(1), 3-27. For emotional/physical effect of the process upon victims see; Strang, H. (2002). *Repair or revenge: Victims and restorative justice* (p. 63). Oxford: Clarendon Press.

healing and forgiveness.²⁹ Engagement with the process as a valued participant and the removal of those traditional feelings of exclusion in the criminal justice system are also advocated as a major benefit of restorative practices, in addition to the perception of feeling of having received fair treatment by the Criminal Justice Process.³⁰ The restorative practice in which this research was undertaken (detailed within the following chapter), identifies the above needs of victims and proposes to meet these needs in a method unavailable within the conflict resolution apparatus of the traditional criminal justice system.

In contrast to its traditional use as a complete approach to social control and regulation, restorative justice practices appear across numerous contexts within contemporary society as additional or alternative methods of conflict resolution to that of the existing traditional processes.³¹ The extent to which a system of social control can be dissected and elements of the process inserted within a pre-existing, often contradictory justice system has significant implications for the effectiveness of those restorative practices.³² Furthermore, the extent to which restorative justice practices can be successfully implemented within a retributive centric justice system, in contradiction to the cultural context in which restorative justice evolved is relatively unexplored within extant literature.³³

In contrast to the traditional role of restorative justice as an apparatus of social control and regulation, contemporary theorists have suggested that the primary function of the restorative justice practices is to seek the alleviation of fears held by the victim and addressing the injustice caused by the offender.³⁴ To many leading advocates, restorative justice can

²⁹ For studies addressing stress see Sherman, L., & Strang, H. (2007).; For the alleviation of fear see Hoyle, C., Young, R., & Hill, R. (2002).; For victim healing and forgiveness see Armour, M., & Umbreit, M. (2006).

³⁰ Umbreit, M. (1994). *Victim Meets Offender*

³¹ Braithwaite, J. (1999). Restorative Justice: assessing optimistic and pessimistic accounts, *Crime and Justice* 25, 1-127.

³² Taft, Lee (2000). Apology Subverted: the Commodification of Apology. *Yale Law Journal*. 109(5), 1135.; Newbury, A. (2008). *Youth Crime: Whose Responsibility?*. *Journal of Law and Society*, 35(1), 131-149.; Newbury, A. (2011). 'I would have been able to hear what they think': Tensions in achieving restorative outcomes in the English Youth Justice System. *Youth Justice: An International Journal*, 11(3), 250-265.

³³ Clark, J. N. (2008). The three Rs: retributive justice, restorative justice, and reconciliation. *Contemporary Justice Review*, 11(4), 331-350.; Daly, K. (2000). Revisiting the relationship between retributive and restorative justice. *Restorative justice: from philosophy to practice*. Dartmouth: Ashgate, 33-54.

³⁴ Pettit, P. (1994). Republican Criminology and Victim Advocacy. *Law and Society Review*. 28(4), 765.; Braithwaite, J. and Parker, C. (1999). "Restorative justice is republican justice." In *Restorative juvenile justice: Repairing the harm of youth crime*, ed. Gordon Bazemore and Lode Walgrave, 103-126. With an introduction by Gordon Bazemore and Lode Walgrave. Monsey, NY: Criminal Justice Press.; Braithwaite, J. and Pettit, P. (1990). *Not Just Desserts: A Republican Theory of Criminal Justice* Oxford, UK: Clarendon Press, 240p.

accomplish these aims more effectively than the traditional western approach,³⁵ with restorative justice aiming to minimise the accusatory and adversarial aspects of the traditional legal system and seek reintegration.³⁶ However, this would appear to represent a departure from the original use of restorative practices within indigenous communities and presents the first step of commodification of the philosophy to pursue different objectives, discussed further within section 4, iv.

Restorative justice has re-emerged as a contemporary criminal justice disposal within England and Wales, growing in popularity and implementation following limited statutory support.³⁷ Despite its historical origins,³⁸ it has only recently developed to offer alternative disposals within the criminal justice process.³⁹ This thesis suggests that such divergent origins may have contributed to the multiple varied practices operating under the ‘restorative justice’ umbrella.⁴⁰ Consequently, restorative justice is not easily defined,⁴¹ no uniform

³⁵ (Braithwaite, John and Pettit, P. (1990). *Not Just Desserts: A Republican Theory of Criminal Justice* Oxford, UK: Clarendon Press.; Morris, A. Maxwell, G. (eds.), (2003) *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*. Oxford: Hart Publishing.; Strang, H. (2001) ‘Justice for Victims of Young Offenders: The Centrality of Emotional Harm and Restoration’. In A. Morris, & D. Maxwell, (eds.), *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (pp. 183-193). Oxford-Portland Oregon: Hart Publishing.

³⁶ Zedner, L. & Hoyle, C. (2007). Victims, Victimization, and the Criminal Process. In M. Maguire, R. Morgan & R. Reiner (eds.), *The Oxford Handbook of Criminology*. Oxford: Oxford University Press.

³⁷ Presser, L. & Hamilton, C. (2006). The Micropolitics of Victim–Offender Mediation. *Social Inquiry*. 76(3), 316-342.; Bazemore, G., & Schiff, M. (2005). *Juvenile Justice Reform and Restorative Justice: Building Theory and Policy from Practice*. Devon, UK and Portland, OR, USA: Willan Publishing.; Van Ness, D. & Strong, K. (2002). *Restoring Justice*. Florence, KY: LexisNexis.; Umbreit, M. (1995). *Mediation of criminal conflict: An assessment of programs in four Canadian provinces*. [available online at: <http://ssw.che.umn.edu/rjp>] ; Umbreit, M. (1998). Restorative justice through victim-offender mediation: A multi-site assessment. *Western Criminology Review*, 1(1). [available online at <http://wcr.sonoma.edu/v1n1/umbreit.html>]. Great Britain. Parliament. Criminal Justice Act 2004: Elizabeth II. Part 12 Chapter 1, section.142 Aims of Sentencing (2004) London: Stationary Office; Great Britain. Parliament. Domestic Violence, Crime and Victims Act 2004: Elizabeth II. Part 3. Chapter 1. section 32. (2004) London: Stationary Office; Great Britain. Parliament. Powers of Criminal Courts (Sentencing) Act, 2000: Elizabeth II. Part IV Community Orders and Reparation Orders. (2000) London: Stationary Office; Victims Code of Practice, 2006, Department for Constitutional Affairs, London: Home Office, Office for Criminal Justice Reform, October 2005.

³⁸ Clark, J. N. (2008). The three Rs: retributive justice, restorative justice, and reconciliation. *Contemporary Justice Review*. 11(4), 331 - 350.; Maxwell, G., & Morris, A. (2001). Restorative Justice and Reoffending. In H. Strang & J. Braithwaite (eds.), *Restorative Justice: Philosophy and Practice* (pp. 93-103). Burlington, VT: Ashgate Publishing Company.

³⁹ Shapland, J. et al (2006). Situating restorative justice within criminal justice. *Theoretical criminology*. 10(4), 505-532.

⁴⁰ Bergseth, K. & Bouffard, J. (2007). The long term impact of restorative justice programming for juvenile offenders. *Journal of Criminal Justice*. 35, 433 – 451.

⁴¹ Vettenburg, N., Bradt, L. & Roose, R. (2007). Relevant Others in Restorative Practices for Minors: For What Purposes? *Australian and New Zealand Journal of Criminology*. 40(3): 291-312.; Daly, K. (2002). Restorative Justice: The Real Story. *Punishment and Society*. 4, 55-79. Reprinted in D. Roche (ed.), (2003). *Restorative Justice* (pp. 85-109). The International Library of Essays in Law & Legal Theory, Second Series. Aldershot, Hants, England: Dartmouth/Ashgate.; Presser, L. & Van Voorhis, P. (2002). Values and Evaluation: Assessing Processes and Outcomes of Restorative Justice Programs. *Crime & Delinquency*. 48(1), 162.

notion of restorative justice exists and no consensus exists regarding an individual process or single theory which fully and accurately describes the phenomena.⁴²

Having received significant attention from both academic theorists and policy makers,⁴³ undergoing numerous Home Office pilot schemes,⁴⁴ the continued debate over the use of such practices has transcended academic discussion and entered main stream media.⁴⁵ However, debates surrounding restorative justice are problematic, due to an absence of any universally accepted definition.⁴⁶ This confusion has been attributed to the theory's 'practice led' nature,⁴⁷ with the implementation of restorative justice overtaking its theoretical and conceptual evolution. Subsequently, questions regarding its aims and integration within criminal justice systems remain unresolved.⁴⁸

Despite this ambiguity, one description of restorative justice (upon which this research is based) describes restorative justice as:

“...a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future”.⁴⁹

⁴² Ashworth, A. (2002). Responsibilities, Rights and Restorative Justice. *British Journal of Criminology*. 42, 578-595. Reprinted in Restorative Justice. Declan Roche (2003), ed. Pp. 179-196. The International Library of Essays in Law & Legal Theory, Second Series. Aldershot, Hants, England: Dartmouth/Ashgate.; McCold, P. (1998). Restorative Justice- Variations on a Theme. In L. Walgrave, (ed.), *Restorative Justice For Juveniles: Potentialities, Risks, and Problems* (pp. 19-53). Leuven: Leuven University Press.; Van Ness, D., & Strong, K. (2006). *Restoring Justice: An Introduction to Restorative Justice*. Cincinnati, OH: Anderson Publishing Co.; Galaway, B., & J. Hudson. (1996). *Restorative Justice: An International Perspective*. Monsey, NY: Criminal Justice Press.; Maxwell, G., & Morris, A. (2001). Restorative Justice and Reoffending. In H. Strang & J. Braithwaite, (eds.), *Restorative Justice: Philosophy and Practice* (pp. 93-103). Burlington, VT: Ashgate Publishing Company.; Braithwaite, J., & Strang, H. (2001). *Restorative justice and civil society*. Cambridge, UK: Cambridge University Press.

⁴³ Holtermann, J. (2009). Outlining the Shadow of the Axe—On Restorative Justice and the Use of Trial and Punishment. *Criminal Law and Philosophy*, 3(2), 187-207.

⁴⁴ Miers, D., et. Al. (2001). *An Exploratory Evaluation of Restorative Justice Schemes*. London, United Kingdom: Home Office.; Shapland, J., et al. (2004). *Implementing restorative justice schemes* (Crime Reduction Programme) A report on the first year. London, United Kingdom: Home Office.

⁴⁵ Kershen, L. (2010). Restorative justice can reach the parts that criminal justice can't. *The Guardian*. London: 37

⁴⁶ Young, R., & Hoyle, C. (2010). Restorative Justice and Punishment. In C. Hoyle (Ed.), *Restorative justice : critical concepts in criminology* (Vol. 4). London, United Kingdom: Routledge.; Roche, D. (2001). The evolving definition of restorative justice. *Contemporary Justice Review: Issues in Criminal, Social and Restorative Justice*, 4(3-4), 341-353.

⁴⁷ Ashworth, A. (2002).

⁴⁸ Umbreit, M. (1998). Restorative Justice Through Victim-Offender Mediation: A Multi-Site Assessment. *Western Criminology Review*. 1(1).

⁴⁹ Marshall, T. (1999). *Restorative Justice: An Overview*. London, United Kingdom: Home Office.

Such a description encompasses the victim centred response to crime, directly involving, through dialogue and direct accountability, those most affected by the offence.⁵⁰ Restorative justice seeks to heal the damage resulting from criminal acts, aiming for the optimal satisfaction of all parties with a stake in the offence.⁵¹ Current debate regarding restorative justice moves from (idealistic) assertions that restorative justice can replace contemporary institutions of criminal justice,⁵² to attempts of reconciling restorative justice with existing paradigms such as retribution.⁵³ Contemporary interpretations of restorative justice have developed from its re-conception during the nineteen seventies, by academics and theorists responding to the dissatisfaction of victims and well documented failures of the criminal justice process.⁵⁴ The implementation of restorative justice within Europe and England began in the nineteen-eighties,⁵⁵ with a migration of those Restorative Practices which were in operation in the United States of America.⁵⁶

⁵⁰M Umbreit, (2001).*The Handbook of Victim Offender Mediation; An Essential Guide to Practice and Research*. Jossey-Bass Inc. Publishers, California.

⁵¹McLaughlin, E., Fergusson, R., Hughes, G., & Westmarland, L. (2003).*Restorative Justice: Critical Issues* London, UK and Thousand Oaks, CA: Sage Publications in association with The Open University.

⁵² Barnett, R. (1977). Restitution: A new paradigm of criminal justice. *Ethics*, 87, 279-301.; Barnett, R. (1980). The Justice of Restitution. *American Journal of Jurisprudence*. 25, 117 – 132.; Eglash, A. (1977). Beyond restitution: Creative restitution. In J. Hudson & B. Galaway (Eds.), *Restitution in criminal justice* (pp. 91-129). Lexington, MA: D.C. Heath.

⁵³Zedner, L. (1994). Reparation and Retribution: Are They Reconcilable? *The Modern Law Review*, 57(2), 228-250.; Bazemore, G. & Walgrave, L. (1999) Restorative Juvenile Justice: In Search of Fundamentals and Outline for Systematic Reform. In Bazemore, G. & Walgrave, L. (eds.), *Restorative Justice: Repairing the Harm of Youth Crime*. Monsey, NY: Criminal Justice Press.; Walgrave, L. (1999) Community service as a Cornerstone of a Systematic Restorative Response to (Juvenile) Crime. In G. Bazemore, & L. Walgrave, (eds.), *Restorative Justice: Repairing the Harm of Youth Crime* (pp-129-154). Monsey, NY: Criminal Justice Press.; Boyes-Watson, C. (2000). Reflections on the Purist and Maximalist Models of Restorative Justice. *Contemporary Justice Review*. 3(4), 441-450.; Walgrave, L. (2000). How Pure Can a Maximalist Approach to Restorative Justice Remain? Or Can a Purist Model of Restorative Justice Become Maximalist? *Contemporary Justice Review*. 3(4), 415-432.

⁵⁴Christie, N. (1977). Conflicts as Property. *British Journal of Criminology*. 17: 1-15. Reprinted in Restorative Justice. Declan Roche (2003). ed. Pp. 37-51. The International Library of Essays in Law & Legal Theory, Second Series. Aldershot, Hants, England: Dartmouth/Ashgate.; Zehr, H. (1990). *Changing Lenses: A New Focus for Crime and Justice*. Scottsdale, PA: Herald Press.;

⁵⁵Marshall and Merry (1990). *Crime and accountability*.; Davis, G, Boucherat, J & Watson, D (1988). Reparation in the service of diversion: the subordination of a good idea. *Howard Journal*. 27(2).; Dignan, J. (1992). *Repairing the damage*.; Miers, D., et al, (2001). *An Exploratory Evaluation of Restorative Justice Schemes*.

⁵⁶Marshall T., & Merry, S. (1990). *Crime and accountability*.; Wright, M., & Galaway, B. (1989). *Mediation and Criminal Justice: Victims, Offenders and Community*. Newbury Park, CA: Sage Publications.; Kerner, H., Marks, E., & Chreckling, J. (1992). Implementation and Acceptance of Victim-Offender Mediation Programs in the Federal Republic of Germany: A Survey of Criminal Justice Institutions. In H. Messmer & H. Otto (eds.), *Restorative Justice on Trial: Pitfalls and Potentials of Victim-Offender Mediation: International Research Perspectives* (pp. 29-54). Dordrecht, NETH: Kluwer Academic Publishers.; Iivari, J. (1992). The Process of

Despite attempts to define the concept, the persistent latent ambiguity of the term ‘restorative justice’ has resulted in the development of a multitude of different restorative practices.⁵⁷ The divergence in theory has operated to further expand the range of practices able to describe themselves as ‘restorative’. This diversity of practice is demonstrated within a description of the Thames Valley restorative cautioning scheme as being:

“...one of the many diverse practices that march under the banner of ‘restorative justice’, a philosophy oriented primarily towards the repair of harm rather than deterrence, rehabilitation or punishment.”⁵⁸

In addition to the competing interpretations regarding restorative justice philosophy another focus of debate is the extent to which it can, or indeed should operate within the criminal justice process. Some theorists continue to assert that restorative justice should operate as being essentially diversionary from the traditional process of trial and imprisonment.⁵⁹ This developed from Republican theorists, who perceive the function of the criminal justice system as being to rectify the equilibrium between victim and offender disrupted by the injustice of the offence.⁶⁰ Such restorative practices are advocated as avoiding the harmful effects of the formal criminal process, such as further criminalisation or

Mediation in Finland: A Special Reference to the Question ‘How to Get Cases for Mediation?’ In H. Messmer & H.-U. Otto (eds.), *Restorative Justice on Trial: Pitfalls and Potentials of Victim-Offender Mediation: International Research Perspectives* (pp. 137-148). Dordrecht, NETH: Kluwer Academic Publisher. Paliero, C. and G. Mannozi (1992). Mediation and Reconciliation Models in Italian Legal Experience. In H. Messmer & H.-U. Otto (eds.), *Restorative Justice on Trial: Pitfalls and Potentials of Victim-Offender Mediation: International Research Perspectives* (pp. 225-238). Dordrecht, NETH: Kluwer Academic Publishers. Peachey, D.E. (1989). The Kitchner Experiment. In M. Wright & B. Galaway (eds.), *Mediation and Criminal Justice: Victims, Offenders and Community* (pp. 14-26). London, UK: Sage Publications.

⁵⁷ Guidoni, O. (2003). The ambivalences of restorative justice: Some reflections on an Italian prison project. *Contemporary Justice Review*, 6(1), 55-68.; Braithwaite, J. (1999). Restorative Justice: Assessing Optimistic and Pessimistic Accounts. *Crime and Justice*. 25, 1-127.; Sullivan, D., & Tift, L. (2001). *Restorative justice: Healing the foundations of our everyday lives*. Monsey, NY: Willow Tree Press.

⁵⁸ Hoyle, C., Young, R., & Hill, R. (2002). *Proceed with caution: An evaluation of the Thames Valley Police initiative in restorative cautioning*. York, UK: Joseph Rowntree Foundation.

⁵⁹ Braithwaite, J. (1999). Restorative Justice: assessing optimistic and pessimistic accounts.

⁶⁰ Braithwaite, J., & Pettit, P. (1990). *Not Just Desserts: A Republican Theory of Criminal Justice*. Oxford, UK: Clarendon Press.; Pettit, P. (1994). Republican Criminology and Victim Advocacy. *Law and Society Review*. 28(4), 765. ; Braithwaite, J., & Parker, C. (1999). Restorative justice is republican justice. In G. Bazemore & L. Walgrave (eds.), *Restorative juvenile justice: Repairing the harm of youth crime* (pp. 103-126). Monsey, NY: Criminal Justice Press.; Walgrave, L. (2000). Restorative justice and the republican theory of criminal justice: An exercise in normative theorizing on restorative justice. In H. Strang & J. Braithwaite (eds.), *Restorative justice: Philosophy to practice* (pp. 165-183). Burlington, Vermont, U.S.: Ashgate Publishing Company.

the labelling of juveniles,⁶¹ in addition to the avoidance of negative experiences including stress and anxiety by victims.⁶² To many leading advocates, restorative justice can accomplish these aims more effectively than the traditional western approach.⁶³ However, other theorists view restorative justice as being firmly located within the retributive paradigm, appropriately dispensed as punishment.⁶⁴ Such debate appears unresolved due to the latent ambiguity of restorative justice philosophy. Whilst some theorists support the notion that restorative justice is axiomatically opposed to the traditional retributive paradigm, others eloquently defend its position as compatible with the values of retributive justice.⁶⁵ However, in the absence of any definition of restorative justice as a concept such discussions regarding its existence in relation to existing paradigms will remain unresolved. With the current state of restorative justice's theoretical development the two positions appear to remain irreconcilable. This is reflected in multiple theorists' claims that restorative justice is able to carry out retributive, rehabilitative, re-integrative and protection roles.⁶⁶ Furthermore,

⁶¹Whyte, B. (2009). Youth 'In-Justice' in the UK - which way for Scotland?. *The Howard Journal of Criminal Justice*. 48 (2), 200-204.; Becker, H. S. (1963). *Outsiders: Studies in the sociology of deviance*. New York: The Free Press.

⁶²Newburn, T. (1993). *The long-term needs of victims: a review of the literature*. Research & Planning Unit Paper 80. London: Home Office

⁶³Strang, H. (2002). *Repair or Revenge: Victims and Restorative Justice*. Clarendon Studies in Criminology. Oxford and New York. Oxford University Press.; Miers, D. (2004). Situating and Researching Restorative Justice in Great Britain. *Punishment and Society*. 6(1), 23-46.

⁶⁴Daly, K. (2002). Restorative Justice: The Real Story. *Punishment and Society*. 4, 55-79. Reprinted in D. Roche (ed.), (2003), *Restorative Justice* (pp. 85-109). The International Library of Essays in Law & Legal Theory, Second Series. Aldershot, Hants, England: Dartmouth/Ashgate.; Barton, C. (2000). Theories of Restorative Justice. *Australian Journal of Professional and Applied Ethics*. 2(1), 41-53.

Duff, A. (2002). Restorative punishment and punitive restoration. In L. Walgrave (ed.), *Restorative Justice and the Law*. Cullompton, United Kingdom: Willan.

Duff, A. (2003a). *Punishment, Communication and Community*. New York, NY: Oxford University Press

Duff, A. (2003b). Restoration and Retribution. In A. Von Hirsch, J. Roberts, A. Bottoms, K. Roach & M. Schiff (Eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* Oxford, United Kingdom: Hart.; Johnstone, G. (2002) *Restorative Justice: Ideas, Values, Debate*. Cullompton, UK:

Willan.; Dignan, J. Restorative justice and the law: The case for an integrated, systemic approach. In L. Walgrave, (ed.), (2002) *Restorative Justice and the Law*. Devon, UK: Willan Publishing.

⁶⁵Zedner, L. (1994). Reparation and Retribution: Are they Reconcilable?; Clark, J. (2008). The three Rs: retributive justice, restorative justice, and reconciliation. *Contemporary Justice Review*. 11(4), 331 - 350.; Smith, N. (2010). Kantian Restorative Justice? *Criminal Justice Ethics*, 29(1), 54-69.; Dorne, C. (2008). *Restorative Justice in the United States*. Upper Saddle River, NJ: Pearson.; Davis, G. (1992). *Making Amends: Mediation and Reparation in Criminal Justice*. London, United Kingdom: Routledge.

⁶⁶Balfour, G. (2008). Falling Between the Cracks of Retributive and Restorative Justice: The Victimization and Punishment of Aboriginal Women. *Feminist Criminology*. 3(2), 101-120.; Hudson, B. (2002). Restorative Justice and Gendered Violence: Diversion or Effective Justice? *British Journal of Criminology*. 42, 616-634.

there appears to be a clear lack of consensus identifying that which constitutes ‘good performance’ or success within restorative justice programmes.⁶⁷ This ambiguity regarding performance assessment and success impacts directly upon empirical studies, the majority of which are undertaken under the auspices of measuring the effectiveness of restorative justice, but utilising different measurement criteria. Despite the expansive body of literature postulating numerous interpretations regarding the essential elements of restorative justice a consensual definition continues to elude theorists,⁶⁸ resigning restorative justice to descriptions of a ‘practice in search of a theory’.⁶⁹

As stated within the preceding rationale, this research argues that the current status of theoretical debate regarding restorative justice may impact upon its subsequent practice. Whilst described as a practice led theory, the use of restorative justice is often predicated upon theoretical claims regarding its potential outcomes and the locations in which it can successfully operate. An examination of those theoretical assertions is necessary when examining the expectations of victim participants. If unfulfilled or erroneous, expectations may impact negatively upon their experiences, the extent to which victims can form accurate expectations of a process with which there is no definition or accepted objectives is problematic.

Despite this ambiguity, certain elements are seen as being central to restorative justice philosophy.⁷⁰ These include assertions that justice should seek to maximise stakeholder

⁶⁷ Roche, D. (2003). *Accountability in Restorative Justice*. Clarendon Studies in Criminology Series. Oxford: Oxford University Press.

⁶⁸ Sharpe, S. (1998). *Restorative Justice: A Vision for Healing and Change*. Alberta: Edmonton.; Strang, H., & Braithwaite, J., (eds), (2001). *Restorative Justice and Civil Society*. Cambridge: Cambridge University Press.; Wachtel, T., & McCold, P. (2001). Restorative Justice in Everyday Life. In H. Strang, & J. Braithwaite, (eds.), *Restorative Justice and Civil Society*. Cambridge: Cambridge University Press; Van Ness, D., & Strong, K., (1997). *Restoring Justice*, Cincinnati: Anderson Publishing Co.

⁶⁹ Crawford, A., & Newburn, T. (2003). *Youth Offending and Restorative Justice: Implementing Reform in Youth Justice*. Devon, UK: Willan Publishing.

⁷⁰ Zehr, H., & Mika, H. (1998). Fundamental Concepts of Restorative Justice. *Contemporary Justice Review*. 1: 47-55. Reprinted in Restorative Justice. Declan Roche (2003), ed. Pp. 73-81. The International Library of Essays in Law & Legal Theory, Second Series. Aldershot, Hants, England: Dartmouth/Ashgate.; Claassen, R. (1996). The Fundamental Principles of Restorative Justice. Available at <http://www.fresno.edu/pacs/rjprinc.html>

participation (with stakeholders being defined as the victim, the offender, and the community, but excluding the state) and that offences create obligations between the offender and the victim, with outcomes measured through victim satisfaction.⁷¹ Such obligations result from the harm caused to the victim, rather than focussing upon the commission of a ‘wrong’.⁷² Voluntary participation is emphasised, minimising coercive action through prioritising mutually agreed outcomes over imposed decisions, with the victim defining the context of the discussion and agreement.⁷³ Theorists continue to assert that it is those parties directly affected by the act who should control its resolution, with stakeholder ‘ownership’ of conflicts being a central feature of this work.⁷⁴

ii. Multiple restorative practices and their impact upon victim expectations

The latent ambiguity of restorative justice identified above has resulted in numerous practices operating under the restorative justice label. This section details those practices, and suggests that such differing practices may result in victims being incapable of forming accurate expectations of restorative justice. Whilst multiple interpretations of restorative justice exist, common across all restorative theories is the promotion of primary stakeholder involvement and empowerment.⁷⁵ However, despite this apparent constant, the task of defining restorative justice remains unresolved.⁷⁶ It has been described as an amalgam of

⁷¹ Marshall, T. (1999). *Restorative Justice: An Overview Home Office*. Research Development and Statistics Directorate. London, UK. <http://www.homeoffice.gov.uk/rds/pdfs/occ-resjus.pdf>

⁷² Braithwaite, J. (2002). *Restorative justice and responsive regulation*. New York, NY: Oxford University Press.

⁷³ Zehr, H. (1985). Retributive Justice, Restorative Justice. *New Perspectives on Crime and Justice* (Issue 4). Akron, PA: Mennonite Central Committee Office of Criminal Justice, September, 16p.

⁷⁴ Christie, N. (1977). Conflicts as Property

⁷⁵ Christie, N. (1977). Conflicts as Property.; J Braithwaite, (2003). ‘Principles of Restorative Justice’. In A. von Hirsch, J. Roberts, A. E. Bottoms, K. Roach & M. Schiff (eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (pp. 1-20). Oxford, UK: Hart Publishing.

⁷⁶ Bradt, L., & Bouverne-De Bie, M. (2009). Victim-offender mediation as a social work practice. *International Social Work*. 52(2), 181-193.; Sherman, L.W., Strang, H., Newbury-Birch, D. & Bennet, S. (2008). *Restorative Justice – Key Elements of Effective Practice*. Source document. London: YJB.:134

empirical expectations and normative ideals that has yet to be fully understood.⁷⁷ Indeed, due to this diversity, it is suggested that some initiatives which operate under the ‘restorative justice’ label fail to adhere to central restorative principles.⁷⁸ This divergence of implementation has resulted in the development of a continuum of restorative practices that recognises each process according to its adherence with central restorative principles.⁷⁹ Within this continuum, direct victim-offender interaction such as ‘Victim-Offender Mediation’, ‘Family Group Conferencing’ or ‘Community Justice Panels’ are described as being fully restorative.⁸⁰ These practices involve interaction and communication between victims and offenders in a safe environment controlled by a trained facilitator. It is this direct interaction between victim and offender which is the focus of this research. The most prevalent attempt to integrate restorative justice practice within the criminal justice system has been through the process of victim offender mediation.⁸¹ Subsequently, this research was conducted within a practice of victim offender mediation, repeatedly described as being the most empirically grounded approach to restorative justice implementation.⁸² Empirical research has repeatedly identified engagement with restorative justice practices as being

⁷⁷Dzur, A., & Olson, S. (2004). The Value of Community Participation in Restorative Justice. *Journal of Social Philosophy*. 35(1), 91–107.

⁷⁸ Roche, D. (2002). *Accountability in restorative justice*.; Hoyle, C., Young, R., & Hill, R. (2002). *Proceed with caution: An evaluation of the Thames Valley Police initiative in restorative cautioning*. York, UK: Joseph Rowntree Foundation.

⁷⁹Newburn, T. (2007). *Criminology*. Cullompton, UK: Willan Publishing.; Guidoni, O. (2003). ‘The Ambivalences of Restorative Justice: Some Reflections on an Italian Prison Project’, *Contemporary Justice Review*. 6 (1), 55-68.; Braithwaite, J. (1999). ‘Restorative Justice: Assessing Optimistic and Pessimistic Accounts’, *Crime and Justice*, 25, 1-127.; Sullivan, D. & Tift, L. (2001). *Restorative Justice: Healing the Foundations of Our Everyday Lives*. Monsey, USA: Willow Tree Press.

⁸⁰Ibid; E Weitekamp & H Kermer, (2001). *Restorative Justice Theoretical foundations*. Cullompton, UK: Willan Publishing.

⁸¹Umbreit, M. (1994). *Victim Meets Offender, The Impact of Restorative Justice and Mediation*. Willow Tree Press, Monsey.; Rossi, R., (2008). Meet Me on Death Row: Post-Sentence Victim Offender Mediation in Capital Cases, *Pepperdine Dispute Resolution Law Journal*. 9(10): 185-210.; Umbreit, M., (1994). *Victim Meets Offender: The Impact of Restorative Justice and Mediation*, Monsey, NY: Criminal Justice Press; Coates, R., & Gehm, J. (1989).; Messemer, H., and Otto, H., (1992). *Restorative Justice on Trial, Pitfalls and Potentials of Victim-Offender Mediation, International Perspectives*, Dordrecht, Netherlands, Kluwer Academic Publications.

⁸²Abrams, J., & Umbreit, M., (2006). Young offenders speak about meeting their victims; implications for future programmes. *Contemporary Justice Review*. 9 (3), 243-256.; Bender, K., & Armour, M., (2007). Spiritual Components of Restorative Justice. *Victims and Offenders*. 2 (3), 251-267.; Rossi, R. (2008). Meet Me on Death-Row: Post-Sentence Victim-Offender Mediation in Capital Cases. *Pepperdine Dispute Resolution Law Journal*. 9(10): 185-210.

beneficial to both victims and offenders.⁸³ However, evidence that restorative practices are more beneficial to victims than the traditional criminal justice system is less compelling.⁸⁴

iii. Policy development and restorative justice implementation

An overview of restorative justice implementation is provided in this section. This includes an assessment of the justification for increasing restorative justice practices, the methods utilised to deliver restorative justice and the varying practices such implementation involves. It provides a context to the delivery of restorative justice, describes the processes used in delivering restorative justice and the position such practices occupy within the criminal justice system.

Whilst restorative justice practices possess some, albeit limited, statutory authority,⁸⁵ and recognition within the Crime and Justice Act 2003,⁸⁶ its application is neither uniform nor consistent throughout the country, with no single authority responsible for implementation. The responsibility for conducting restorative justice initiatives has become distributed among a collection of key institutions, ranging from Police Constabularies, Local Government, Probation Services and volunteer groups. This fragmentation of restorative justice programmes contributed in part to the difficulties in acquiring formal access, as at the time this research was conducted no centralised body existed, coordinating restorative justice provision. This has been addressed, to some extent through central government provision of a restorative justice register.⁸⁷

⁸³ Duwe, G. (2011). Evaluating the Minnesota Comprehensive Offender Reentry Plan (MCORP): Results from a randomized experiment. *Justice Quarterly*. DOI: 10.1080/07418825.2011.555414

⁸⁴ Wemmers, J. (2002). *Victims' Experiences With, Expectations and Perceptions Of Restorative Justice*

⁸⁵ Cavadino, M. & Dignan, J. (2007). *The Penal System, An Introduction*. London, UK: Sage.

⁸⁶ Crime and Justice Act 2003 section 142,

⁸⁷ 13 September 2011. Funded by the Ministry of Justice and implemented by the Restorative Justice Council (RJC), the register lists all qualified practitioners of restorative justice.
<http://www.justice.gov.uk/news/features/features-13-09-11a>

As stated, academic literature has repeatedly identified the deficiencies of the traditional criminal justice process. Common criticisms appear to be feelings of exclusion and injustice contributing to decreased victim satisfaction. Throughout empirical research victims repeatedly provide comments describing the lack of respect accorded to them or the impersonal nature of the justice process.⁸⁸ The perception of their irrelevance and marginalisation leads to claims that victims who initially had confidence in the system grow to feel betrayed or disaffected.⁸⁹ The above concerns have resulted in repeated assertions that a victim of a crime is more often than not also the victim of the Criminal Justice System.⁹⁰ Such claims are supported in studies demonstrating that victims often feel powerless and vulnerable within a system intended to protect and defend their autonomy.⁹¹ These feelings appear to be a result of their apparent exclusion from the process itself, in addition to secondary victimisation by an uncaring criminal justice system that appears to dismiss them as irrelevant.⁹²

A significant body of literature illustrates the deficiencies of traditional, formal criminal justice processes with research suggesting that up to 38% of victims of crime are dissatisfied with formal criminal justice processes.⁹³ Common complaints include feelings of disempowerment, lacking autonomy as a result of the offence, feeling excluded, angry and

⁸⁸ Comments repeatedly include statements such as “They don’t treat you like a person. They ask what happened and type that in and that’s it, [it’s] very impersonal” [Interview-A024] being common place, from studies on crime and justice, a series from the Dutch research and documentation centre: Wemmers, J. (1996) *Victims in the Criminal Justice System*, WODC – ministry of Justice, Kugler Publications: Amsterdam/ New York.

⁸⁹ Walgrave, L. (2000). Extending the Victim Perspective Towards a Systemic Restorative Justice Alternative. In A. Crawford and J. Goodey (eds.), *Integrating a Victim Perspective within Criminal Justice* (pp. 253-284). Dartmouth, Ashgate.

⁹⁰ Drapkin, I. & Viano, E. (eds) (1974). *Victimology: A New Focus*. Toronto and Lexington, Mass: Lexington Books.

⁹¹ Goodey, J. (2005). *Victims and Victimology: Research, Policy and Practice*. Harrow, England: Pearson Longman.

⁹² Umbreit, M. (1993). Crime Victims and Offenders in Mediation: An Emerging Area of Social Work Practice. *Social Work*. 38(1), 69-73.

⁹³ Shapland, J., Wilmore, J., & Duff, P. (1985). *Victims in the criminal justice system*. Aldershot, UK: Gower Publishing Company.; Erez, E. (1999). Who’s Afraid of the Big Bad Victim? Victim Impact Statements as Victim Empowerment and Enhancement of Justice. *Criminal Law Review*. 545.

humiliated.⁹⁴ Whilst the principles of Due Process which govern Western justice models protect the rights of offenders and society, similar protection is not replicated towards the victim's rights.⁹⁵ The well documented deficiencies of the traditional Criminal Justice System have led to claims that a repression of emotions by victims, due to the lack of opportunities to express them, can in many cases lead to victims blaming themselves.⁹⁶ Additionally, it has been suggested that additional stress and unhappiness may be inflicted upon victims through the process of punishing the offender, as the adversarial Trial process has the potential to result in victims experiencing the more unpleasant features of the criminal justice system.⁹⁷ In addition to negative experiences of stress and anxiety resulting from the Trial process empirical studies clearly indicate that victims of offences against the person, who remain uninformed regarding the progress of 'their' case, both pre and post trial, may experience additional anxiety and stress.⁹⁸ Numerous attempts have been made to satisfy these perceived needs of victims in the criminal justice process. A recent Home Office review indicates the extent to which victims' rights are seen by current politicians to be in need of development,⁹⁹ reflecting the view already stated in an earlier government consultation paper.¹⁰⁰ Further consideration is given to the rights of victims in the Code of Practice for Victims of Crime, focussing primarily upon information provision.¹⁰¹ The growing importance of the position of

⁹⁴Christie, N. (1977). Conflicts as Property; Zedner, L. (2004). Reparation and Retribution: Are They Reconcilable?; Braithwaite, J. (1996). *Restorative Justice and a Better Future* Dorothy J. Killam Memorial Lecture. Dalhousie University, October 17.; Erez, E., Roeger, L., & Morgan, R. (1994). Victim Impact Statements in South Australia.; Williams, J. & Holmes, K. (1981). *The second Assault: Rape and Public Attitudes*. Westport CO: Greenwood Press.

⁹⁵Zehr, H. (1990). *Changing Lenses: A New Focus for Crime and Justice*. Scottsdale, PA: Herald Press.

⁹⁶Newburn, T. (1992). *The Long term Needs of Victims*.

⁹⁷Fenwick, H. (1997). Procedural 'Rights' of Victims of Crime: Public or Private Ordering of the Criminal Justice Process? *The Modern Law Review*. 60(3), 317-333.

⁹⁸Shapland, J., Willmore, J. & Duff, P. (1985). *Victims in the criminal justice system*. Farnborough: Gower.; Newburn, T. & Merry, S. (1990). 'Keeping in Touch: Police-Victim Communication in Two Areas'. Home Office Research Study No 116. London: HMSO.

⁹⁹*Rebalancing the Criminal Justice System in Favour of the Law Abiding Majority: Consultation on restricting the use of backed for bail warrants*. (2006). Department for Constitutional Affairs, London: Stationary Office para.1.26.

¹⁰⁰Rebuilding Lives, Supporting Victims of Crime, Cm.6705 (2005). Department for Constitutional Affairs, London: Stationary Office para.1.26. at p.2.

¹⁰¹Code of Practice for Victims of Crime (2006)

‘victim’ in contemporary politics and criminal justice is further illustrated through the creation of the position of Commissioner for Victims.¹⁰²

Efforts to increase the level of victim participation within the Criminal Justice System have moved progressively from limited participatory schemes such as the ‘One Stop Shop’ policy, (involving the provision of information by police regarding the status of the victim’s case), to victim impact statements which allowed a more direct allocation of a voice in the proceedings, providing an opportunity to describe the impact of the offence. However these were criticised for raising the expectations of effective communication which neither scheme could meet.¹⁰³ Subsequently many victims experienced additional disappointment.¹⁰⁴ The potential for criminal justice initiatives to erroneously raise victim expectations which consequently are not fulfilled is an important area for further research, due to the potential impact such failures can have upon participating victims.¹⁰⁵ This elevation of victim expectations has been postulated as one possible reason for the apparent failure of the One Stop Shop and victim impact statement initiatives and may be relevant within restorative justice responses which continue to grow in both popularity and use.¹⁰⁶

Interest with restorative justice theory can be seen as developing concurrently with a growing dissatisfaction with a criminal justice system apparently incapable of achieving its aims of rehabilitation and deterrence.¹⁰⁷ It is suggested that this recent increased interest and

¹⁰² At the time of writing, an appointment had not yet been made, despite the post being advertised in January 2006 (Home Office press release, “Commissioner for Victims and Witnesses” (January 25, 2006)).

¹⁰³ Erez, E. (1990). The Effect of Victim participation in Sentencing on Sentence Outcome. *Criminology*. 28 (3), 451-474.

¹⁰⁴ Hoyle, C. (2002). Securing Restorative Justice for the 'Non-Participating' Victim. In C. Hoyle & R. Young, (eds.), *New Visions of Crime Victims* (pp. 97-131). Oxford, UK: Hart Publishing.

¹⁰⁵ Erez, E. & Roeger, L. (1995). The effect of victim impact statements on sentencing patterns and outcomes: The Australian experience. *Journal of Criminal Justice*. 23(4), 363-75.; Erez, E., Roeger, L. & Morgan, F. (1997). Victim harm, impact statements and victim satisfaction with justice: An Australian experience. *International Review of Victimology*. 5, 37-60.

¹⁰⁶ Presser, L. & Hamilton, C. (2006). *The Micropolitics of Victim–Offender Mediation*.; Bazemore, G. & Schiff, M. (2005). *Juvenile Justice Reform and Restorative Justice: Building Theory and Policy from Practice*. Devon, UK: Willan Publishing.; Van Ness, D. & Strong, K. (2006). *Restoring Justice*.

¹⁰⁷ Blagg, H. (1985). Reparation and Justice for Juveniles. *British Journal of Criminology*. 25, 267-79.; Downes, D (1983). *Law and Order: Theft of an Issue*. London: Blackrosepress.; Brody, S. (1976). *The Effectiveness of Sentencing-A Review of the Literature*. Home Office Research Study No 35, Home Office Research Unit, London.

popularity is a result of widely acknowledged shortcomings of a modern criminal justice system, including the marginal role and subsequent dissatisfaction experienced by victims.¹⁰⁸ Theorists claim that dissatisfaction and vulnerability among victims and communities often persist within retributive justice systems.¹⁰⁹ Whilst victims have been described as holding an essential position as gatekeepers within the Criminal Justice System,¹¹⁰ completing “the old triumvirate of crimes, criminals and their control”,¹¹¹ they remain marginalised within the criminal justice system.¹¹² Academics have argued that the needs of victims within the criminal justice system can be rectified through their greater inclusion and integration into the process.¹¹³ However, although victims’ desire for greater engagement within the judicial process is well established,¹¹⁴ the exact nature and the extent of that engagement is not yet established within empirical studies.¹¹⁵

The current position of victims within the criminal justice system originates from the late nineteenth century, with State assumption of prosecutions.¹¹⁶ This contemporary

¹⁰⁸ Roche, D. (2003). *Accountability in restorative justice*.; Wright, Martin (1991). *Justice for Victims and Offenders: A Restorative Response to Crime*. Bristol, PA: Open University Press.; Wright, M. (1999). *Restoring Respect for Justice. A Symposium*. Winchester: Waterside Press.; Walgrave, L. (1995). Restorative Justice for Juveniles: Just a Technique or a Fully Fledged Alternative?. *Howard Journal of Criminal Justice*. 34(3), 228-249.; Walgrave, L. (1999). Community Service as a Cornerstone of a Systematic Restorative Response to (Juvenile) Crime. In G. Bazemore, & L. Walgrave, (eds.), *Restorative Justice: Repairing the Harm of Youth Crime* (pp. 129-154). Monsey, NY: Criminal Justice Press.; Bazemore, G. & Walgrave, L. (1999). Restorative Juvenile Justice: In Search of Fundamentals and Outline for Systematic Reform. In G. Bazemore, & L. Walgrave, (ed.), *Restorative Justice: Repairing the Harm of Youth Crime* (pp. 45-74). (Monsey, NY: Criminal Justice Press.

¹⁰⁹ Baldry, A. (1998). Victim-Offender Mediation in the Italian Juvenile Justice System: The Role of the Social Worker. *British Journal of Social Work*. 28, 729-744.; Bazemore, G. (1996), Three Paradigms for Juvenile Justice. In B. Galaway, & J. Hudson, (ed.), *Restorative Justice: International Perspectives* (pp. 37-67). Monsey, NY: Criminal Justice Press.

¹¹⁰ Gottfredson, M. R., & Gottfredson, D. M. (1988). *Decision making in criminal justice* (Vol. 3). Springer.

¹¹¹ Zedner, L. & Hoyle, C. (2007). Victims, Victimization, and the Criminal Process. In M. Maguire, R. Morgan & R. Reiner (eds.), *The Oxford Handbook of Criminology*. Oxford, UK: Oxford University Press.

¹¹² Bazemore, G., Gilbert, M., J. & Choi, J. (2012). Review of research on victims' experiences in restorative justice: Implications for youth justice. *Children and Youth Services Review*. 34(1), 35; Zedner, L. (2004) *Criminal Justice*. Oxford, UK: Clarendon Press.

¹¹³ Goodey, J. (2005). *Victims and Victimology: Research, Policy and Practice*.; Newburn, T., (1993). *Long Term Needs of Victims*

¹¹⁴ Wemmers, J. (1996). *Victims in the criminal justice system*. Amsterdam: Kugler Publications.; Shapland, J., Willmore, J., & Duff, P. (1985). *Victims in the Criminal Justice System*. Aldershot: Gower Publishing.

¹¹⁵ Wemmers, J., & Canuto, M. (2002). *Expériences, attentes et perceptions des victimes à l'égard de la justice réparatrice: Analyse documentaire critique*. Ottawa, Canada: Ministère de la Justice.

¹¹⁶ Godfrey, B. (2008). Changing Prosecution Practices and their impact on Crime Figures, 1857-1940. *British Journal of Criminology*. 48 (2), 171-189.

perception of crime as an offence against the State emanates from a significant paradigm shift, occurring during the twelfth century following the Norman invasion of Britain.¹¹⁷ Representing a departure from crime as a conflict between victims and offenders, within the context of a community, crime was redefined as a violation of the King's peace. Upholding the authority of the State replaced the previous practice of reparation towards the victim.¹¹⁸ This exclusion of the victim from the criminal justice process has been described as a precondition for the existence of the modern criminal justice process, as an expression of state authority.¹¹⁹ This is further reflected in comments that victims are now, mere footnotes to the Criminal Justice Process, necessary only if required as a witness.¹²⁰

Initial approaches to a victim centred criminal justice system can be found in Von Hentig's 'The Criminal and His Victim' (1948).¹²¹ Highly critical of the traditional offender-orientated nature of criminal justice, his work proposed a dynamic interactionist approach that challenged traditional conceptions of the victim as a passive actor. The disempowerment described by Von Hentig is a key element of a victim's indignity, an element exacerbated by the traditional (exclusionary) criminal process.¹²² It is alleged that western legal systems compound the disempowerment that victims feel, firstly at the hands of offenders and then at the hands of a professional, remote justice system that eschews their participation.¹²³ This process of 'suffering' at the hands of the system itself has been described as 'secondary

¹¹⁷Umbreit, (1994). *Victim Meets Offender*.

¹¹⁸ Delgado, R. (2000). Goodbye to Hammurabi: Analysing the Atavistic Appeal of Restorative Justice. *Stanford Law Review*. 52 (4), 751-775; Hart, H. (1958). The Aims of the Criminal Law. *Law and Contemporary Problems*. 23 (3).

¹¹⁹Zedner, L., (1994). *Reparation and Retribution*.; Foucault, M. (1975). *Discipline and Punish: the Birth of the Prison*. New York, USA: Random House.; Foucault, M. (1978). *The History of Sexuality, vol. 1: An Introduction*. New York, USA: Pantheon Books.; Foucault, M. (1980) *Power/Knowledge: Selected Interviews and Other Writings (1972-197)*. Brighton, UK: Harvester Press.

¹²⁰Zehr, H. (1990). *Changing lenses*.

¹²¹Von Hentig, H. (1948). *The Criminal and His Victim: studies in the sociobiology of crime*. New Haven, CT: Yale University Press.

¹²² This disempowerment would be the foundation upon which Nils Christie developed his seminal article introducing restorative justice ideas to modern debates in 'Conflicts as Property'

¹²³ Christie, N., (1977).

victimisation' and is a major criticism of the traditional process,¹²⁴ providing the main focus for justifying restorative justice implementation. Victims repeatedly direct anger at a criminal justice system, perceived as reducing their role to little more than additional evidence.¹²⁵ The major criticism which is repeatedly referred to is the absence of any opportunity, during the court process to redress the emotional hurt suffered by the victim.¹²⁶

This peripheral position of victims is often questioned with reference to the victims' axiomatic relationship in the commission of criminal offences.¹²⁷ The victim is central to the offender's entrance into the criminal justice system. The position of the victim as a 'gatekeeper'¹²⁸ emphasises the inconsistency of their peripheral, marginalised position within the system. Furthermore, in addition to the negative effects experienced by victims this exclusion and marginalisation may impact negatively upon the system itself. When victims feel alienated from the system, they will be less likely to engage with the process or to supply information upon which the criminal process proceeds. In addition to victim's marginal role, the allocation of legal guilt within a retributive approach is prominent within criticisms of traditional justice postulated by labelling and stigmatisation theories advocated by Braithwaite and Becker.¹²⁹ Many turn to restorative justice because of dissatisfaction with the manner in which the formal criminal justice system continues to function.¹³⁰ Restorative justice is suggested by advocates as a method of rectifying these deficiencies, repairing the damage caused by the offender, through the process of reparation, reassurance, reconciliation

¹²⁴Shapland (1985).

¹²⁵Umbreit, M.(1993).Crime Victims and Offenders in Mediation: An Emerging Area of Social Work Practice. *Social Work*.38(1), 69-73.

¹²⁶ Davis, G. (1992). *Making Amends*.

¹²⁷ Herman, S. (2004). Is RJ possible without a parallel system for victims.In H. Zehr, & B. Toews, (eds.), *Critical Issues in Restorative Justice*. Devon, UK: Criminal justice press, Willan Publishing.; Hardaway, R. (2003). *No Price Too High, Victimless Crimes and the Ninth Amendment*. Praeger, Westport, Connecticut, London.

¹²⁸Gottfredson, M. &Gottfredson, D. (1987).*Decision Making In Criminal Justice – Toward the rational exercise of discretion*. Springer: London.; Fenwick, H. (1997). Procedural 'Rights' of Victims of Crime: Public or Private Ordering of the Criminal Justice Process?.*The Modern Law Review*. 60 (3), 317–333.

¹²⁹ Becker, H. (1963).*Outsiders*. New York, NY: Free Press

¹³⁰Walgrave, L. (2000).

or the according of respect.¹³¹ The process should be empowering for both parties and should personalise the justice process, a key feature in light of many of the criticisms of the traditional system, focussing upon its impersonal nature.¹³² However, questions remain regarding the extent to which an offender within the criminal justice process can ever be ‘empowered’ or truly engage with voluntary restorative schemes. The power dynamics of offenders and victims within the criminal justice system would appear to suggest that any such, truly voluntary participation is unavailable to those individuals subject to authoritative expressions of power.¹³³ Additionally, restorative justice theorists often emphasise the interaction of offender and victim on an equal base, however the extent to which this occurs in reality when one individual is the subject of judicial proceedings and state power is unclear.¹³⁴ Furthermore, the extent to which victims participate in restorative justice practices, in pursuit of the aforementioned benefits is not evidenced within existing research. In light of those benefits advocated by restorative theorists, and the existence of restorative justice as a voluntary process, the extent to which victims voluntarily participate with the expectation of receiving those alleged benefits is explored within subsequent chapters.

iv. The Commodification of Restorative Justice Theory

As identified above, the persistent latent ambiguity of restorative justice theory has resulted in a plethora of practices operating under the restorative justice label. Whilst this diverse implementation is readily accepted by both restorative theorists and practitioners,¹³⁵ it is suggested that this lack of consensus has resulted in an inability to definitively accord the

¹³¹Zehr, H. (1990). *Changing Lenses*.

¹³²Severson, M. (1995). Social Work and the Pursuit of Justice through Mediation. *Social Work*. 40(5).:Umbreit, M. (1989). Violent Offenders and Their Victims. In M. Wright & B. Galaway (eds.), *Mediation and Criminal Justice: Victims, Offenders and Community* (pp. 99-112). London, UK: Sage Publications.

¹³³Goffman, E. (1961). *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates*. New York, Doubleday.

¹³⁴Foucault, M. (1975). *Discipline and Punish; (1978). The History of Sexuality, vol. 1.*

¹³⁵Op.cit.fn.40.

term 'restorative justice' to any single practice. The diversity of practice, with apparently incompatible objectives, arises from this modification of restorative justice philosophy. Whilst this diverse range of practices represents the extent to which restorative justice remains definitively redundant, it demonstrates the extent to which the commodification of restorative justice philosophy occurs in practice.¹³⁶ In absence of any universal definition, it would appear that restorative practices are capable of selecting aspects of restorative justice theory to pursue, with such selections being dependent upon the specific objectives of the individual scheme. As a result, practices operating under the restorative justice remit appear to prioritise conflicting objectives and emphasise different elements of practice which are perceived as being most appropriate for the fulfilment of the specific objectives of the practice.¹³⁷

Individual restorative practices appear to focus upon specific values and principles from the restorative justice spectrum. As such the experiences of participants within such practices are likely to vary depending upon the specific restorative practice in which they participate. The selection or focus upon individual elements of the restorative paradigm can be described as a commodification of the restorative theory. It represents the selection of specific aspects which are perceived as being most appropriate for the delivery of individual practice objectives. The fulfilment of individual objectives will necessarily vary depending upon the location of the practice within the criminal justice system and its specific aims or source of funding. Its persistent latent ambiguity facilitates the adaptation and modification of practices in pursuit of specific aims and objectives whilst continuing to rely upon the

¹³⁶ Van der Spuy, E., Parmentier, S., & Dissel, A. (eds.), (2007). *Restorative justice: politics, policies and prospects*. Kluwer.

¹³⁷ Taft, L. (2000). Apology subverted: The commodification of apology. *The Yale Law Journal*, 109(5), 1135-1160.; Newbury, A. (2008). *Youth Crime: Whose Responsibility?*. *Journal of Law and Society*, 35(1), 131-149; Newbury, A. (2011). 'I would have been able to hear what they think': Tensions in achieving restorative outcomes in the English Youth Justice System. *Youth Justice: An International Journal*, 11(3), 250-265; Gabbay, Z. D. (2005). Justifying Restorative Justice: A Theoretical Justification for the Use of Restorative Justice Practices. *Journal of Dispute Resolution*, 349.

restorative label. Such commodification is demonstrated through the contrasting of practices implemented for the benefit of victims' and those focussed more upon the rehabilitation and reform of offenders. The pursuit of such diverse objectives between individual practices suggests that the interests of some participants will necessarily suffer, thus victim needs may not feature as a priority within schemes focussed upon offender rehabilitation, or vice-versa. Identified within the preceding section, such contrasting objectives are most evident within those restorative practices which prioritise victim interests (such as those practices advocated by Victim Support in the United Kingdom) and those which are focussed upon offender rehabilitation (such as SORI operating within Cardiff Park Prison providing surrogate victims for restorative justice conferences) intending to promote offender awareness and rehabilitation.

Whilst debate abounds regarding the pursuit of a unified definition of restorative justice theory, the extent to which such commodification of restorative justice philosophy may reduce the necessity and benefit of such clarification is less convincingly argued. The continued absence of an accepted definition of restorative justice philosophy not only enables the implementation of multiple practices pursuing differing objectives actually requires the commodification of the philosophy. Advocated as a practice led philosophy,¹³⁸ restorative justice is often depicted as being all things to all men, delivering multiple benefits over the traditional Criminal Justice System. However, within theoretical discussion the potential for a single method of conflict resolution to fulfil the varied and diverse requirements for both victim integration and offender rehabilitation, in addition to community censure, is not yet established.¹³⁹

¹³⁸Op.cit.fn.47.

¹³⁹Van Ness, D. (1993). New wine and old wineskins: Four challenges of restorative justice. *Criminal Law Forum*.4 (2), 251-276.; Bazemore, G. (1998). Restorative Justice and Earned Redemption Communities, Victims, and Offender Reintegration. *American Behavioral Scientist*, 41(6), 768-813.; Ashworth, A. (2002). Responsibilities, rights and restorative justice. *British Journal of Criminology*, 42(3), 578-595.

Through drawing upon restorative justice literature which purports to identify elements of good practice,¹⁴⁰ it is suggested that each restorative practice implicitly prioritises different elements of the process and outcomes. This prioritisation of differing elements of restorative philosophy, through carrying elements of restorative culture into different practices has the potential to result in varying experiences for participants.¹⁴¹ The practices in which this research was conducted (detailed further within Chapter 2) implemented a victim centric model of restorative justice. The restorative justice programme within location A grew out of the closure of the local court and a feeling of marginalisation of victims and the community. The practice therefore focussed upon increasing the participation and satisfaction of victims within the Criminal Justice Process.

It is suggested that such commodification is a necessary consequence of the implementation of a conceptually latent theory. Furthermore, the necessity of individual practice' selection of specific objectives is exacerbated through the insecure, ad hoc funding of restorative practices within England and Wales and the different locations in which restorative justice practices operate within. The impact of the individual restorative practices pursuing specific aims and objectives dependent upon the nature and context of the individual scheme is exacerbated by the selection of specific elements of the restorative paradigm. Within these restorative practices, individual facilitator's pursuit of specific aspects of the restorative paradigm will result in aspects of restorative culture being carried across into the criminal justice process and individual restorative justice scheme. Those culture carriers represented by the facilitators and co-ordinators will necessarily convey their particular understandings and values which were selected from the theory of restorative justice. The

¹⁴⁰ Op.cit.fn.14

¹⁴¹ Abu-Nimer, M. (2001). *Reconciliation, justice, and coexistence: theory and practice*. Lexington books.; Gray, P. (2005). The politics of risk and young offenders' experiences of social exclusion and restorative justice. *British Journal of Criminology*. 45(6), 938-957.; Cook, K. J. (2006)..Doing difference and accountability in restorative justice conferences. *Theoretical Criminology*, 10(1), 107-124.

effect of such commodification and subsequent actions of those culture carriers may dramatically alter the experiences of participants across each individual practice. As different elements of restorative justice philosophy are commodified and carried over into a western justice system, the focus and objectives of individual restorative practices will necessarily vary. The policy framework adopted by individual schemes will necessarily set the context for the model of restorative justice which is adopted throughout its delivery and is likely to convey, intentionally or unintentionally, certain values and principles which will impact upon victim experience. Such variation then holds the potential to impact upon participants' experiences.

v. Victims within the Criminal Justice System of England and Wales

The following section reviews literature addressing the position of victims within the criminal justice process, providing the context in which restorative justice implementation is undertaken. In a review on the "Long Term Needs of Victims" the creation of mediation and reparation schemes were identified as "developments required for the needs of victims", among other initiatives such as Victim Support schemes [and shelters for battered women], clearly identifying victim offender mediation as a process of value to be used more widely.¹⁴² Restorative justice programmes are premised upon providing opportunities for victims to describe exactly how the offence affected them. It is claimed that this interaction helps the victim to obtain benefits including the reduction of stress, the removal of feelings of anger, the alleviation of their fears about the offender and the promotion of healing and

¹⁴²Maxwell, G., & Morris, A. (2001). Putting Restorative Justice Into Practice for Adult Offenders. *Howard Journal of Criminal Justice*. 40(1), 55-69.

forgiveness.¹⁴³ The restorative model is described as focusing on problem solving for the future, allowing time for informational and emotional needs to be addressed and a mutually agreeable restitution to be determined.¹⁴⁴ The process should be empowering for both parties (victims and offenders) and should personalise the justice process.¹⁴⁵ This personal nature becomes a key feature when compared to criticisms of the traditional system, focussing upon its ‘very impersonal nature’ and its ‘aloofness’.¹⁴⁶

At present procedural and service rights for victims¹⁴⁷ exist within England and Wales on a quasi- or non-legal basis, contained in various Home Office documents, including the Victim and Court Charters. Both Charters are part of the Citizen’s Charter. It may possess quasi-legal status, (that being a rule not directly enforceable in civil or criminal proceedings)¹⁴⁸ but as a White Paper, it has no formal legal status. First published in 1990, the Victims’ Charter sets out the standards of service that victims can expect from criminal justice agencies (such as the police and the courts) and the avenues of redress available. ‘The Code of Practice for Victims of Crime’, published on 18 October 2005 and being enacted in April 2006, shares a similar ambiguous status regarding the enforcement of the standards contained within it. Within its introduction it states; “...where a person fails to comply with this code that does not, of itself, make him or her liable to any legal proceedings.”¹⁴⁹ The code is however admissible in evidence in both criminal and civil proceedings with a complaint being investigated by the Parliamentary Ombudsman under the Parliamentary

¹⁴³ For studies examining victim stress see: Sherman, L., & Strang, H. (2007). *Restorative Justice: the evidence*. The Smith Institute, London. For the alleviation of victim fear see: Hoyle, C., Young, R., & Hill, R (2002). *Proceed with Caution: An Evaluation of the Thames Valley Police Initiative in Restorative Cautioning*. Joseph Rowntree Foundation, York.

¹⁴⁴ Lauany & Murray (1918). Victim /Offender groups. In M. Wright & B Galaway (eds.), *Mediation and Criminal Justice: Victims, offenders and community*. London: Sage Publications.

¹⁴⁵ Severson, M. (1995). Social Work and the Pursuit of Justice through Mediation. *Social Work*. 40(5).

¹⁴⁶ Wemmers, J-A. (1996). *Victims in the criminal justice system*. Amsterdam: Kugler Publications.

¹⁴⁷ Erez, E., & Rogers, L. (1999). Victim impact statements and sentencing outcomes and processes. The perspectives of legal professionals. *British Journal of Criminology*, 39(2), 216-239.; Ashworth, A. (2002). Responsibilities, Rights and Restorative Justice. *British Journal of Criminology*. 42, 578-595.

¹⁴⁸ Ganz, G. (1987). *Quasi-Legislation: Recent Developments in Secondary Legislation*. London, UK: Sweet & Maxwell.

¹⁴⁹ *The Code of Practice for Victims of Crime*. Published on 18 October 2005 and being enacted in April 2006

Commissioner Act of 1967.¹⁵⁰ It would appear that, despite the repeated argument that victims of crime do have 'rights' and that the provision of these rights can, in real terms improve their position within the criminal justice system,¹⁵¹ the extent to which such rights are legally enforceable remains unresolved.

Whilst existing as pilot schemes throughout the nineteen eighties,¹⁵² restorative justice has only recently emerged as an integrated option within the criminal justice system in select Police Constabularies of England. Within different Police Constabularies restorative practices vary dramatically, with some engaging in the practice of 'restorative cautioning',¹⁵³ and others utilising 'victim offender mediation',¹⁵⁴ with limited forces appearing to utilise 'fully restorative' practices.¹⁵⁵ Whilst restorative disposals have been available in theory to young offenders through provision of Young Offender Panels within the Youth Justice and Criminal Evidence Act,¹⁵⁶ this alternative sentencing structure has resulted in only 7% of victims choosing to attend such panel meetings.¹⁵⁷ However, restorative justice practices appear to be gaining momentum within political circles, with politicians and policy think tanks repeatedly

¹⁵⁰ Great Britain. Parliamentary Ombudsman Act 1967: Elizabeth II. (1967) London: Stationary Office

¹⁵¹ Fenwick, H. (1997). Procedural 'Rights' of Victims of Crime: Public or Private Ordering of the Criminal Justice Process? *The Modern Law Review*. 60 (3), 317-333.

¹⁵² Davies, G., (1992). *Making Amends; mediation and reparation in Criminal Justice*.; Maxwell, G., & Morris, A., (2001). Putting Restorative Justice into Practice for Adult Offenders. *Howard Journal of Criminal Justice*. 40(1), 55-69; Marshall, T., & Merry, A., (1990).; Bazemore, G. (2005). Reaction Essay: Whom and How Do We Reintegrate? Finding Community in Restorative Justice. *Criminology & Public Policy*. 4(1): 131-148.

¹⁵³ Young, R., & Wilcox, A. (2007). How Green was Thames Valley?: Policing the Image of Restorative Justice Cautions. *Policing and Society*. 17(2), 141-163.; O'Mahony, D., & Doak, J. (2004). Restorative Justice -- Is More Better?: The Experience of Police-Led Restorative Cautioning Pilots in Northern Ireland. *Howard Journal of Criminal Justice*. 43(5), 484-505.; Young, R., Hoyle, C., & Wilcox, A. (2004). *An evaluation of the impact of restorative cautioning: findings from a reconviction study*. Findings 255. London, U.K.: Research, Development and Statistics Directorate, Home Office.

¹⁵⁴ Jacobsson, M. (2012). Victim-offender mediation in Sweden: Is the victim better off? *International Review of Victimology*.; Choi, J., & Gilbert, M. (2010). 'Joe everyday, people off the street': a qualitative study on mediators' roles and skills in victim-offender mediation. *Contemporary Justice Review*. 13(2), 207-227.

¹⁵⁵ Guidoni, O. (2003). The Ambivalences of Restorative Justice.; Sullivan, D. & L Tifft, L. (2001). *Restorative Justice: Healing the Foundations*.; von Hirsch, A., Bottoms, A., Roach, K., Schiff, M., & Roberts, J. (2003). *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* Oxford and Portland, Oregon: Hart Publishing.

¹⁵⁶ Youth Justice and Criminal Evidence Act, Part 1 Referrals to Youth Offender Panels, Referral Orders s 7., ss4), a), 1999.

¹⁵⁷ Newburn, T., Crawford, A., & Earle, R., (2002). *The Introduction of Referral Orders into the Youth Justice System: Final report*. London, UK: Home Office Research Study 242.

espousing its potential advantages.¹⁵⁸ Through the provisions of Crime and Disorder Act 1998, restorative justice victim offender mediation has been heavily used within the Youth Justice System,¹⁵⁹ with Young Offender Teams overseeing and facilitating its delivery and implementation.¹⁶⁰ The presence of victim offender mediation within the youth justice system is facilitated through Young Offender Panels. Established by the Youth Justice and Criminal Evidence Act 1999, which provides reparation (if appropriate) as a version of community non-custodial sentencing, such alternative sentencing has resulted in victims choosing to attend only 7% of cases.¹⁶¹

vi. Past Empirical research and subsequent limitations

This section examines the empirically tested claims of restorative justice, reviewing the evidence and identifying the limitations within this body of empirical work which justifies this research. With the expansion of theoretical discourse regarding restorative justice, an extensive body of empirical work has grown. Recent years have witnessed a proliferation in research reports regarding the benefits of restorative justice including the improvement of victims' position within the criminal justice process,¹⁶² their success in reducing offender recidivism,¹⁶³ and increasing victim satisfaction.¹⁶⁴ This research indicates

¹⁵⁸ Swift and sure justice: the government's plans for reform of the criminal justice system. Presented to parliament by the secretary of state for justice by command of her majesty. (2012) p.6.; Testing neighbourhood resolution panels, a specification to inform expressions of interest, July 2011, Ministry of Justice, London

¹⁵⁹ Whyte, B. (2007). 'Recent Developments in Youth Justice in Scotland. In P. Raynor, & G. McIvor, (eds.), *Developments in Social Work with Offenders* (pp. 40-61). Research Highlights. London: Jessica Kingsley.

¹⁶⁰ Young Offender Teams were established by the Crime Disorder Act 1998. This also introduced the Action Plan Order which is designed to provide an individually tailored intensive response to offending behaviour. Lasting for up to three months, the young person is required to comply with an action plan, supervised by a Youth Offending Team. Action plan orders usually include a requirement for reparation following contact with the victim where possible. The act additionally places a duty on Local Authorities to formulate and implement annual Youth Justice Plans, for review by the Youth Justice Board.

¹⁶¹ Newburn, T., Crawford, A., et al. *Introduction of referral orders into Youth Justice System Second Interim report*.

¹⁶² Sherman, L., & Strang, H. (2007). *Restorative Justice: the evidence*. London: The Smith Institute; Hoyle, C., Young, R., and Hill, R. (2002). *Proceed with Caution: An Evaluation of the Thames Valley Police Initiative in Restorative Cautioning*. York: Joseph Rowntree Foundation; Armour, M. and Umbreit, M. (2006). Victims Forgiveness in restorative justice dialogue. *Victims & Offenders*. 1 (2), 123-140.

¹⁶³ Hayes, H. (2005). Assessing Re-offending in Restorative Justice Conferences. *Australian and New Zealand Journal of Criminology*. 38(1), 77-101.; Nugent, W., Umbreit, M., Wiinamaki, L., & Paddock, J., (2001).

that restorative justice holds the potential to reduce post-traumatic stress, remove feelings of anger and fears about the offender and promote healing and forgiveness.¹⁶⁵ Benefits which have been evidenced empirically include an increased sense of security or well-being for victims and increased offender compliance with restitution agreements because an authority is monitoring the process. Research repeatedly indicates high victim satisfaction with mediation (typically 75% or more),¹⁶⁶ with some studies recording 80%-100% of victims who perceive the mediation process and experience as having been worthwhile.¹⁶⁷ Additionally, some empirical studies indicate a clear reduction in offender recidivism when engaging in restorative justice practices.¹⁶⁸ In an American study only 11% of victims reported dissatisfaction and 97% reported they would participate in the process again and recommend it to others.¹⁶⁹ However, although this 11% represented a significant minority of victims who did not find the process to have been beneficial, no further exploration was undertaken. Additionally another study found victims who went through victim offender mediation were twice as likely to feel that they had been treated fairly by the Criminal Justice Process.¹⁷⁰ In a review of the Thames Valley initiatives, the benefits of restorative justice are clearly identified, with the majority of participating victims feeling satisfied with the process,

Participation in Victim-Offender Mediation and Reoffense: Successful Replications? *Research on Social Work Practice*. 11 (1), 5-23.

¹⁶⁴Hoyle, C., Young, R., & Hill, R. (2002). *Proceed with Caution: An Evaluation of the Thames Valley Police Initiative in Restorative Cautioning*. York: Joseph Rowntree Foundation; Vos, B., Umbreit, M., & Coates, R. (2006). Victim offender mediation: An evolving evidence-based practice. In D. Sullivan & L. Tifft, (eds.), *Handbook of Restorative Justice A Global Perspective* (pp. 52-61). London, UK: Routledge.

¹⁶⁵ For studies addressing stress see L Sherman and H Strang, (2007).: For the alleviation of fear see C Hoyle, R Young and R Hill, (2002).: For victim healing and forgiveness see M Armour and M Umbreit, (2006).

¹⁶⁶ Campbell et al (2005); Coats, R., & Gehm, J. (1985).; (1989).; Dignan, J. (1990).; Hayes et al (1998).; Marshall, T., & Merry, S. (1990).; Umbreit, M. (1988).; (1990).; (1991c).; Umbreit, M. (1994).; Umbreit, M., & Coates, R. (1992).; Umbreit et al (1997).; Umbreit et al (2006).; Wilcox & Hoyle (2004).

¹⁶⁷ Marshal, T. & Merry, S. (1990).; Marshal, T. (1991).

¹⁶⁸ Hayes, H. (2005). Assessing Re-offending in Restorative Justice Conferences. *Australian and New Zealand Journal of Criminology*. 38 (1), 77-102.; Nugent, W., Umbreit, M., Wiinamaki, L., & Paddock, J. (2001). Participation in Victim-Offender Mediation and Re-offence: Successful Replications? *Research on Social Work Practice*. 11 (1), 5-23.

¹⁶⁹Coates, R. & Gehm, J. (1985). *Victim Meets Offender – an evaluation of victim-offender reconciliation programmes*. Michigan City, Indiana: PACT Institute of Justice.

¹⁷⁰Umbreit, M. (1994).

their fears and anger generally dissipated. (92% described the process as “a good idea”).¹⁷¹ Victim empowerment throughout the process of mediation can be broken down further into three sub themes; feeling involved in the process of justice, the opportunity for expressing opinions and emotions and having a sense of emotional healing and closure.¹⁷² A study conducted in New Mexico found that within victims who participated in a restorative process 57% were more satisfied with how their case was processed, compared with a 42% satisfaction rate in the “referred but no mediation” group and only 46% satisfaction rate of victims in the “non referral to mediation” group. These differences appear to be consistent with similar findings from a larger multi-site study.¹⁷³ Such studies repeatedly demonstrate that victims felt aggrieved with the traditional Western models of justice, with research indicating that their experiences of the processes involved perceptions of disempowerment and exclusion, with victim offender mediation advocated as an effective means for increasing victim involvement in the criminal justice process.¹⁷⁴

Participation rates for victims in victim offender mediation schemes usually range from 40-60%,¹⁷⁵ with explanations for this relatively low amount remaining absent within

¹⁷¹Hoyle, C. (2002). *Securing Restorative Justice for the Non-participating Victim*.

¹⁷²Doak, J.(2011). Honing the stone: refining restorative justice as a vehicle for emotional redress. *Contemporary Justice Review*. 14(4), 439-456.; Bandes, S. (2009). Victims, "Closure," and the Sociology of Emotion. *Law and Contemporary Problems*. 72(2), 1-26.

¹⁷³Umbreit, M. (1993). Juvenile Offenders meet their Victims. The impact of mediation in Albuquerque, New Mexico.; Umbreit, M., & Coates, J. (1992a). The impact of mediating victim offender conflict: an analysis of programs in three states. *Juvenile and Family Court Journal*, 43(3), 1-8.; Umbreit, M., & Coates, J. (1992). *Victim Offender Mediation: An analysis of programs in four states of the US Minneapolis*. Minnesota Citizens Council on Crime and Justice.

¹⁷⁴Coates, R. & Gehm, J. (1989). An Empirical Assessment. In M. Wright & B. Galaway (eds.). *Mediation and Criminal Justice: Victims, Offenders and Community* (pp. 251-263). London, UK: Sage Publications.

¹⁷⁵ Participation levels of 40 to 60 % were recorded by Gehm, J. (1998). Victim-offender mediation programs: An exploration of practice and theoretical frameworks. *Western Criminology Review*, 1 [Online]. URL (accessed 19 May 2008): <http://wcr.sonoma.edu/v1n1/gehm.html>, 42% ; Nicol, W. J., Kirkwood, S. & MacFarlane, L. (2006). *Youth justice services evaluation report: April 2004 – March 2005*. Sacro. URL (accessed 20 June 2008): http://www.sacro.org.uk/YJ_Eval_Report.pdf; 43% in Dutton, K. & Whyte, B. (2006). CJSW briefing no. 8: *Implementing restorative justice within an integrated welfare system: The evaluation of Glasgow's restorative justice service, summary report*. Edinburgh: CJSW Development Centre for Scotland.; average of 53% in England, Wilcox, A. & Hoyle, C. (2004). *The national evaluation of the youth justice board's restorative justice projects*. URL (accessed 20 June 2008): <http://www.yjb.gov.uk/publications/Resources/Downloads/restorativejusticefull.pdf>. But high levels of participation such as 77% have been recorded, see; Shapland, J et al (2006). *Restorative justice in practice – findings from the second phase of the evaluation of three schemes*. www.homeoffice.gov.uk/rds/pdfs06/r274.pdf

extant literature.¹⁷⁶ These low levels of engagement are unexpected for a process repeatedly described as possessing significant benefits for participants,¹⁷⁷ with high levels of victim satisfaction, typically 80-90% being consistently recorded.¹⁷⁸ Furthermore, levels of victim engagement in restorative practices remain surprisingly low across multiple implementations. One potential explanation of this low level of engagement may be that victims possess limited or negative expectations of restorative processes and view such engagement as unnecessary or holding no benefit. Such a theory could only be examined fully through a detailed account of victim expectations of restorative practices prior to their experience in the process.

Furthermore, the importance of victim expectations is emphasised within extant literature demonstrating the consistency of victim expectations between differing restorative practices. This may be explained through the formation of these expectations. If victim expectations of restorative justice are the result of personal knowledge and understanding it may be that their personal knowledge is deficient and they are unable to distinguish between restorative practices which vary significantly. Alternatively, if victim expectations develop from external knowledge, such as a police officer or restorative facilitator, then the consistency of expectations across divergent restorative practices may result from this information source. However, no such exploration into the formation of victim expectations and their origins exists within extant literature. Whilst a wide range of practices operate under

and the full report at http://www.shef.ac.uk/polopoly_fs/1.783!/file/RestorativeJustice2ndReport.pdf. See Table 3.3, page 43 of the full report.

¹⁷⁶Hoyle, (2002). *Securing Restorative Justice for Non-Participating victims.*; Davis, G. (1992). *Making Amends: Mediation and Reparation in Criminal Justice*. London, United Kingdom: Routledge.,

¹⁷⁷Christie, N. (1977). *Conflicts as Property.*; Zehr, H. (1995). *Changing Lenses.*; Braithwaite, J. (1989). *Crime, Shame and Reintegration*. New York, NY: Cambridge University Press.

¹⁷⁸Vos, B., Umbreit, M. & Coates, R. (2006). Responding to Hate Crimes Through Restorative Justice Dialogue. *Contemporary Justice Review*. 9(1), 7-21.

the label restorative justice,¹⁷⁹ past studies have shown a remarkable consistency in victim expectations across different restorative practices.¹⁸⁰

Following assertions that victims desire restorative justice following their dissatisfaction with the formal criminal justice system,¹⁸¹ victim offender mediation often attempts to fulfil those needs including an apology and material restitution to the victim, whereas in Britain such desires appear more symbolic.¹⁸² It is alleged that victims become less punitive as they become closer to the complexities of their case,¹⁸³ with victims valuing the opportunity to voice their opinions about the crimes. The expression of emotions by their offenders is often perceived as being crucial during the mediation session.¹⁸⁴ The process is described as contributing to the reduction of victims' unforgiving emotions such as anger and a desire for punitive retribution whilst possibly increasing their positive responses to the offender.¹⁸⁵ Furthermore, those stereotypical notions and fears that victims regularly possess regarding their offender are often dispelled.¹⁸⁶ Following this, the main rationale of restorative justice realisation may be seriously impeded if victims are not involved in the process.¹⁸⁷ These schemes also provide the victim with an opportunity to convey their

¹⁷⁹Raye, B., & Roberts, A. (2007). Restorative processes. In G. Johnstone & D. Van Ness, *Handbook of restorative Justice* (pp.211-227). Cullompton, UK: Willan.

¹⁸⁰Dignan, J. (2005). *Understanding Victims and Restorative Justice*.; Schiff, M. & Bazemore, G. (2002). Restorative Conferencing for Juveniles in the United States: Prevalence, Process, and Practice. In, G. Elmar, M. Weitekamp & H. Kerner. *Restorative Justice: Theoretical Foundations* (pp. 177-203). Devon, UK: Willan Publishing.

¹⁸¹Walgrave, L. (2002). Restorative justice and the Law: Socio-Ethical and Juridical Foundations for a Systemic Approach. In L. Walgrave, (ed.), *Restorative Justice and the Law* (pp. 191-218). Devon, UK: Willan Publishing.

¹⁸²Bazemore, G., & Griffiths, C. T. (1997). Conferences, circles, boards, and mediations: The new wave of community justice decision making. *Fed.Probation*, 61, 25.

¹⁸³Braithwaite, J. & Mugford, S. (1994). Conditions of Successful Reintegration Ceremonies. *British Journal Of Criminology*. 34(2), 139-171.

¹⁸⁴Jacobsson, M. (2012). Victim-offender mediation in Sweden: Is the victim better off? *International Review of Victimology*. Published online before print July 19, 2012, doi: 10.1177/0269758012446985; Bergseth, K., & Bouffard, J. (2012). Examining the effectiveness of a restorative justice program for various types of juvenile offenders. *International Journal of Offender Therapy and Comparative Criminology*. Published online before print July 18, 2012, doi: 10.1177/0306624X12453551.

¹⁸⁵Witvliet, C., Worthington, E., Root, L., Sato, A., Ludwig, T., & Exline, J. (2008).; Wright, M. (1995). *Victims, mediation and criminal justice*.

¹⁸⁶Hoyle, C., Young, R., & Hill, R. (2002).

¹⁸⁷Edwards, I. (2001). Victim Participation in Sentencing: The Problems of Incoherence. *The Howard Journal of Criminal Justice*. 40, 39-54.

feelings and to achieve closure,¹⁸⁸ allowing the victim to feel involved with the system as a valid and respected participant.¹⁸⁹

A Meta-analysis conducted by Nugent indicated well documented positive effects were found when narrowly defined outcome measures are used,¹⁹⁰ however there remains a lack of conclusive detailed knowledge on restorative justice effectiveness utilising more broadly defined outcomes.¹⁹¹ This has contributed to the current situation where, despite the growth of a voluminous amount of research and evaluations of restorative practices, little is empirically known regarding the extent to which restorative justice realises its theoretical potential.¹⁹² Indeed, such studies are not unanimous in their results, whilst some report therapeutic advantages for victims,¹⁹³ conversely other studies indicate no great psychological benefit to victims and demonstrate victim disillusionment.¹⁹⁴

Studies have demonstrated that victims referred to mediation are twice as likely to experience fairness regarding the manner in which the Criminal Justice System dealt with their case than victims who were referred to victim offender mediation but chose not to enter mediation.¹⁹⁵ It would appear that this high level of perceived 'fairness' results from the process itself as opposed to the outcome, supporting theories of procedural fairness.¹⁹⁶ Additionally this is reflected within empirical studies demonstrating that the mediation

¹⁸⁸ Ahmed, E., & Braithwaite, J. (2005). Forgiveness, Shaming, Shame and Bullying. *The Australian and New Zealand Journal of Criminology*. 38 (3), 298-323.

¹⁸⁹ Sherman, L. & Strang, H (2007).; Hoyle, C (2002).; Marshall, T. (1999).; Christie, N (1977).; Braithwaite, J. (1996).; Van Ness and Strong (1997).; Umbreit, & Coates (1992).

¹⁹⁰ Nugent, W., Umbreit, M. & Williams, M. (2003). Participation in Victim-Offender Mediation and the Prevalence and Severity of Subsequent Delinquent Behavior: A Meta-Analysis. *Utah Law Review*. 1, 137-166.

¹⁹¹ Bergseth, K. & Bouffard, J. (2007). The long-term impact of restorative justice programming for juvenile offenders. *Journal of Criminal Justice*. 35(4), 433-451.

¹⁹² Abrams, L. & Umbreit, M.S. (2006). Youthful offenders response to victim offender conferencing in Washington County, MN. *Contemporary Justice Review*. 9(3), 243-256.; Strang, H. (2002). *Repair or Revenge*

¹⁹³ Erez, E & Rogers, L (1999). Victim Impact Statements and Sentencing Outcomes and Processes. The Perspectives of Legal Professionals. *British Journal of Criminology*. 39 (2), 216-239.

¹⁹⁴ Sanders, A., Hoyle, C. & Morgan, E. (2001). Victim Impact Statements: Can't Work, Won't Work. *Criminal Law Review*, p. 447

¹⁹⁵ Umbreit, M. (1994). *Victim meets offender*.

¹⁹⁶ Tyler, T. (2003). Procedural justice, legitimacy and the effective rule of law. In M. Tonry (ed.), *Crime and justice: A review of research* (pp. 283-257). Chicago: University of Chicago Press.; Lind, E. & Tyler, T. (1988). *The Social Psychology of Procedural Justice*. Plenum Press, New York.

process was significantly more likely to result in victims' perceptions of fairness.¹⁹⁷ However, lower levels of victim satisfaction are present in 'intermediate' participatory schemes, such as indirect mediation via the use of a 'shuttle mediator'.¹⁹⁸ Extant research records that participants in victim offender mediation schemes identify their interaction and role within the process as being beneficial.¹⁹⁹ This offers a potential explanation regarding the lower levels of satisfaction with shuttle mediation compared to direct mediation. Unlike direct mediation, the absence of interaction within shuttle mediation, results in it being closer to the traditional justice process,²⁰⁰ allegedly sharing its perceived deficiencies. However, another potential explanation may rest with the impact of consistent expectations present across both forms of restorative practice and the failure of shuttle mediation to meet those over ambitious expectations more appropriate to direct mediation.

Whilst not denying the value of such research it is suggested that to fully understand restorative justice, being a clear example of social interaction,²⁰¹ detailed qualitative data is required which examines participants' perceptions, expectations and experiences. With evaluation rising to become a defining characteristic of the modern criminal justice system,²⁰² operating within broader managerial approaches,²⁰³ it is suggested that such a narrow focus

¹⁹⁷Umbreit, M. (1994). *Victim Meets Offender*.

¹⁹⁸Dignan, J. (1992). Repairing the Damage: Can Reparation be made to work in the service of diversion? *British Journal of Criminology*, 32, 453-472.; Umbreit, M. & Roberts, A. (1996). *Mediation of Criminal Conflict in England: An Assessment of Services in Coventry and Leeds*. St. Paul. MN: Center for Restorative Justice & Mediation. University of Minnesota.

¹⁹⁹Coates, R.B., & Gehm, J. (1989). An Empirical Assessment. In M. Wright & B. Galaway (eds.), *Mediation and Criminal Justice: Victims, Offenders and Community* (pp 251-263). London: Sage Publications.

²⁰⁰Umbreit, M. (1994). *Victim Meets Offender: The impact of restorative justice and mediation*. Monsey: Criminal Justice Press.

²⁰¹Becker, H. S. (1996). *The epistemology of qualitative research*. Chicago, IL: University of Chicago Press; Kvale, S. (1996). *The social construction of validity In Interviews: An introduction to qualitative research interviewing*. Thousand Oaks: Sage.; Bottoms, A. (2000) Relationship between theory and research in criminology. In R. King and E. Wincup (eds.) *Doing Research on Crime and Justice*. Oxford: Oxford University Press.

²⁰²McEvoy, K. & Mika, H., (2002). Restorative justice and the critique of informalism in Northern Ireland. *British Journal of Criminology*. 42, 534-562.

²⁰³Feeley, M. & Simon, J. (1992). The New Penology: Notes on the Emerging Strategy of Corrections and its Implications, *Criminology*, 30 (4), 449-474.; Bottoms, A. (1995). The philosophy and politics of punishment and sentencing. In C. Clarkson and R. Morgan (eds.), *The Politics of Sentencing Reform*. Oxford: Oxford University Press.

impacts detrimentally upon understandings of crime and society.²⁰⁴ It is argued that this narrow research agenda misrepresents complex interaction processes, reducing nuanced experiences to base output measurements with limited further examination. Victim satisfaction measures are repeatedly utilised throughout empirical studies of restorative justice, primarily due to the continued pursuit of funding. Whilst the satisfaction ratings of participants provides (in theory) an objective measure with which to demonstrate the potential and success of restorative justice schemes, it is also this over simplistic assessment which results in limited understandings of the nuanced and complex interactions which occur during a restorative meeting.

The reliance upon output measurements and quantitative data collection, whilst providing output focussed data, is not capable of generating a detailed assessment of the process of restorative justice or victims experiences of their engagement. This is exacerbated through an over reliance upon ‘satisfaction’ surveys, with limited attempts to examine what is meant by ‘satisfaction,’²⁰⁵ or those considerations which contribute to victims final determination regarding their overall ‘satisfaction’. Indeed conflating victim experiences within base satisfaction ratings, which assess the restorative justice process as a single, uniform entity, fails to account for specific aspects of the process which may impact negatively upon victims’ experience. Assessments of victim satisfaction as an output measurement do not account for those aspects which are experienced negatively, as additional contributory aspects of the process may result in victims recording an overall positive satisfaction rating. A base measurement of this overall assessment cannot provide the necessary data regarding those aspects of the process that are not valued, or which impact negatively upon victim participants. The danger with a single rating of satisfaction without

²⁰⁴ Garland, D. (2001). *The Culture of Control: Crime and Social Order in Contemporary Society*. Oxford, UK: Oxford University Press.

²⁰⁵ Van Ness, D., & Schiff, M., (2001). Satisfaction Guaranteed? The meaning of satisfaction in restorative justice. In G. Bazemore & M. Schiff (eds.), *Restorative and Community Justice*. Cincinnati, OH: Anderson Publishing.

further exploration is that the process in its entirety is perceived as beneficial and operates to increase victim satisfaction, whereas the reality may be that very specific aspects of the process succeed in this where other elements fail.

It is suggested that the predominance of this objective measurement within empirical studies of restorative justice implementation has precluded the development of detailed understanding regarding those elements of the process which victims' value, and subsequently those which operate to negatively affect participants. The measurement of satisfaction alone, as a single entity, cannot account for the multifaceted and nuanced interpretations victims have of their experiences. Assessment of base satisfaction may invite victims to evaluate their experience on balance, and conclude that they were satisfied as the positive aspects outweighed the negative ones. This assessment, whilst utilised in numerous other fields, is problematic for restorative justice, which claims to improve the positions of victims entirely, within the criminal justice system,²⁰⁶ not merely to offer benefits in exchange for new negative consequences. Base descriptions of victim experiences are not sufficient in pursuit of a genuine understanding of restorative justice. It is suggested that the same experience can be seen as both positive and negative by different victims, without any exploration into why this occurs the data remains of limited utility. For meaningful assessments and examination of restorative justice processes, victim satisfaction should be addressed completely, as a multifaceted, complex normative construction with multiple contributory factors each demanding its own exploration. Extant literature purporting to address satisfaction appears to be both simplistic and reductionist,²⁰⁷ which contributes

²⁰⁶Bazemore, G. (1998). Restorative Justice and Earned Redemption: Communities, Victims, and Offender Reintegration. *American Behavioural Scientist*. 41(6).; Strang, H. & Sherman, L. (2003). Repairing the Harm: Victims and Restorative Justice. *Utah Law Review*. 15.; Dignan, J. (2005). *Understanding victims and restorative justice*. Berkshire: Open University Press.

²⁰⁷Silberstein, M. & McGeever, J. (1999). The Search for Ontological Emergence. *The Philosophical Quarterly*. 49 (195).; Jones, R. (2000). *Reductionism: Analysis and the Fullness of Reality*. Bucknell University Press.

minimally beyond that superficial assessment of the processes impact. It is suggested that satisfaction, as a measurement, requires further deconstruction and examination.²⁰⁸

5. Thesis Structure

This chapter is followed by a methodology chapter detailing the data collection and subsequent analysis. Specifically, it justifies the use of an overarching case study research design, selecting one restorative practice as the ‘case’ within which mixed method data collection (focussing upon qualitative data collection) was implemented. It details the locations in which the data was gathered, in addition to the sampling methods employed and compliance with ethical approval requirements. Following the Methodology, holistic chapters based on both primary data *and* literature are presented. The first of these chapters, Chapter III, focuses upon victim expectations of the restorative process and relies primarily upon their pre-process questionnaires, but includes some data from the post process semi-structured interviews. Chapter IV then moves to examine victim experiences of the restorative process, identifying elements of the experience which victims valued, and those elements which were received negatively or resulted in negative experiences. The extent to which this correlates to central restorative justice theory is also considered. The final data chapter (V) addressed the nexus between victim expectations and their experiences of the process, establishing that an unexpected aspect of the restorative practice, or an unfulfilled expectation can often impact negatively upon the victim participants experience of the process. Finally, Chapter VI identifies the potential implications of the data presented in this research. It discusses the application of these findings and identifies areas of future restorative justice research. The thesis concludes by identifying the implications of the findings for recent government restorative justice policy and its future development.

²⁰⁸Van Ness, D., & Schiff, M., (2001), *Satisfaction Guaranteed?*

6. Chapter Summary

This chapter established the aims of the research, providing rationale behind the study. It presented a synopsis of the key theoretical debates regarding restorative justice, the latent ambiguity of the concept and the conflict regarding its reconciliation with retributive paradigms of justice. The extent to which restorative justice theory continues to evolve and avoid conclusive definition is apparent from the literature review above.

It is suggested that such ambiguity may impact upon restorative practices, affecting the extent to which victims are capable of forming accurate expectations of process, which may then impact upon their subsequent experiences. Furthermore, the extent to which past empirical research has focussed upon quantitative service delivery criteria is discussed, suggesting that such reliance has produced a body of knowledge limited in its ability to accurately depict victim experiences of restorative practices. Justification for this thesis is found within the limitations of existing empirical research. Studies addressing victim expectations have suffered from methodological limitations, with data collected following completion of the restorative process.

Furthermore, past research has failed to examine the consistency of victim expectations across diverse restorative justice practices and the traditionally low levels of victim participation. The emphasis upon quantitative analysis of restorative practices has resulted in a lack of rich data addressing participant experiences of restorative practices. Without such data, the extent to which victim experiences of restorative practices correlate with theoretical claims of restorative advocates cannot be established. Finally, this thesis explores the potential nexus between victim expectations and their subsequent experiences of the restorative process, arguing that unfulfilled or erroneous expectations impacts negatively upon victim experiences. Again the extent to which victim expectations may impact upon their experiences cannot be determined through existing, quantitative data. The following

chapter will provide a detailed examination of the methodology used to achieve the aims outlined in this chapter, specifically examining the relationship between expectations and experiences of victims participating in restorative practices. Such expectations and experiences are examined with regard to the potential impact which commodification of the restorative paradigm through the actions of the relevant ‘culture carriers’ may have upon victim participants of individual restorative practices.

Chapter II

Methodology

1. Introduction

This chapter details the methodological instruments employed throughout this research. The chapter commences with an explanation of the overarching case study design, encompassing mixed methods of data collection but relying upon predominantly qualitative inductive approach (with limited use of basic quantitative data). This chapter details, and justifies, key methodological decisions and choices made during the course of the research. In particular, the chapter describes the research design (Section 3). The selection of the restorative justice practice upon which this study focussed is detailed, with access negotiations discussed within Section 5. The practical elements of data collection are described within Section 6, including discussion of ethical considerations required throughout this research. The subsequent analysis of collected data is then detailed in Section 7. Finally, the limitations arising from the methods adopted are identified within Section 8. The final section of this chapter will conclude by examining the appropriate use of this research and limitations ensuing from the methods adopted.

2. The Aims of the Research

This research provides a detailed account of victim expectations and experiences of restorative justice practice. Recent years have witnessed a proliferation in research reports regarding the benefits of restorative justice including the improvement of victims' position

within the criminal justice process,²⁰⁹ their success in reducing offender recidivism,²¹⁰ and increasing victim satisfaction.²¹¹ However, such research is of predominantly quantitative nature,²¹² relying upon pre-coded output measurements.²¹³ Whilst not denying the value of such research it is suggested that to fully understand restorative justice, being a clear example of social interaction,²¹⁴ detailed qualitative data is required which examines participants' perceptions, expectations and experiences. Furthermore, the aim to establish victim expectations and experiences necessitated a before and after research design. This interactionist epistemology adopted throughout this research is discussed in greater detail within later sections. Furthermore, within those limited qualitative studies many rely upon anecdotal data, with minimal considerations of qualitative research design, reliability or validity. This research presents detailed information regarding the relationship between victim expectations and experiences of the restorative process.²¹⁵

²⁰⁹Sherman, L., & Strang, H. (2007). *Restorative Justice: the evidence*. London: The Smith Institute; Hoyle, C., Young, R., & Hill, R. (2002). *Proceed with Caution: An Evaluation of the Thames Valley Police Initiative in Restorative Cautioning*. York: Joseph Rowntree Foundation; Armour, M. & Umbreit, M. (2006). Victims Forgiveness in restorative justice dialogue. *Victims and Offenders* 1 (2), 123-140.

²¹⁰ Hayes, H. (2005). Assessing Re-offending in Restorative Justice Conferences. *Australian and New Zealand Journal of Criminology* 38(1), 77-101.; Nugent, W., Umbreit, M., Wiinamaki, L., & Paddock, J., (2001). Participation in Victim-Offender Mediation and Re-offense: Successful Replications?. *Research on Social Work Practice*. 11 (1), 5-23.

²¹¹Hoyle, C., Young, R., & Hill, R. (2002). *Proceed with Caution: An Evaluation of the Thames Valley Police Initiative in Restorative Cautioning*. York: Joseph Rowntree Foundation; Vos, B., Umbreit, M., & Coates, R. (2006). Victim offender mediation: An evolving evidence-based practice. In D. Sullivan and L. (eds.) *Handbook of Restorative Justice A Global Perspective* (pp 52-61). London: Routledge.

²¹²Bazemore, G., & Green, D. (2007). "Yardsticks" for Victim Sensitive Process: Principle-Based Standards for Gauging the Integrity of Restorative Justice Process'. *Victims and Offenders*. 2 (3), 289-301.

²¹³Umbreit, M., Coates, R., & Vos, B. (2002). Restorative justice circles. *American Probation and Parole Association*, Winter, 36-40; Nugent, W., Umbreit, M., Wiinamaki, L., & Paddock, J., (2001). Participation in Victim-Offender Mediation and Reoffense: Successful Replications?. *Research on Social Work Practice*. 11 (1), 5-23.

²¹⁴Becker, H. S. (1996). *The epistemology of qualitative research*. Chicago, IL: University of Chicago Press; Kvale, S. (1996). *The social construction of validity In Interviews: An introduction to qualitative research interviewing*. Thousand Oaks: Sage; Bottoms, A. (2000). Relationship between theory and research in criminology. In R. King & E. Wincup (eds.) *Doing Research on Crime and Justice*. Oxford: Oxford University Press.

²¹⁵Ashworth, A (2000). Victims' Rights, Defendants Rights and Criminal Procedure. In A. Crawford, & J. Goodey, (eds.), *Integrating a Victim Perspective within Criminal Justice* (pp. 185-206). Aldershot: Ashgate.; Wilmore, J., & Duff, A. (1985). *Victims in the Criminal Justice System*. Cambridge studies in Criminology, Aldershot: Gower.; Sanders, A., Hoyle, C., Morgan, R. & Cape, E. (2001). Victim Impact Statements: Don't Work Can't Work. *Crim. L.R.*; Christie, N. (1977). Conflicts as Property. *British Journal of Criminology*. 17(1), 1-15; Zedner, L. (2004). *Criminal Justice*. Oxford: Oxford University Press; Braithwaite, J. (1996). Restorative Justice and a Better Future, Dorothy J. Killam Memorial Lecture. Dalhousie University, October 17; Hoyle, C. &

3. Research Design

This research was undertaken using a predominantly qualitative approach.²¹⁶ This methodology was adopted for its strength in inductive reasoning.²¹⁷ As this research examined victim attitudes, understandings and experiences following their engagement in restorative justice programmes, a predominantly inductive, exploratory approach, with interpretist epistemology,²¹⁸ and constructionist ontology,²¹⁹ justified a predominately qualitative approach.²²⁰ The aims of this research did not require the results extrapolation to wider populations, as is usual for quantitative data. Rather, this research sought detailed assessments of individual's normative deliberations, understandings and experiences of a social interaction. Furthermore, the specific objectives of exploring victim expectations, understanding and experiences are particularly appropriate for qualitative methodology, due to its ability to capture complex meanings and experiences which quantitative research cannot uncover.²²¹ These considerations, in addition to the limitations of extant knowledge identified within the preceding chapter justify the use of a predominately qualitative approach.²²² A case study methodology was adopted as the over-arching framework, within which questionnaires and semi-structured interviews were used. This selection is discussed further in section 3, ii.

Young, R. (2002). (eds.), *Securing Restorative Justice for the Non-Participating Victim*. In C. Hoyle and R. Young (eds.), *New Visions of Crime Victims*. Oxford: Hart Publishing.

²¹⁶Babbie, E. (2010). *The Practice of Social Research*. Belmont, CA: Wadsworth.; Berg, B. (2009). *Qualitative Research Methods for The Social Sciences*. Boston, MA: Pearson.; Corbin, J., & Strauss, A. (2008). *Basics of Qualitative Research*. London, UK: Sage..

²¹⁷Giddens, A. (1984). *The constitution of society*. Cambridge, UK: Polity press.; Lofland, J., & Lofland, L. (1995). *Analysing social settings*. Belmont, CA: Wadsworth.; Marshall, C., & Rossman, G. (2006). *Designing Qualitative Research*. London, UK: Sage.; Miles, M., & Huberman, A. (1994). *Qualitative data analysis: an expanded sourcebook*. London, UK: Sage.; Robson, C. (2002). *Real World Research*. Oxford, UK: Blackwell.

²¹⁸Barlett, D., & Payne, S. (1997). Grounded Theory - Its basis, rational and procedures. In G. McKenzie, J. Powell & R. Usher (Eds.), *Understanding social research: perspectives on methodology and practice*. London, UK: Falmer Press.

²¹⁹Alasuutari, P., Brannen, J., & Bickman, L. (2009). Social research in changing social conditions. In P. Alasuutari, J. Brannen and L. Bickman (eds.), *The sage handbook of social research methods* (pp. 1). London, UK: Sage.

²²⁰Denzin, N. K., & Lincoln, Y. S. (2000). *Handbook of qualitative research*. Thousand Oaks, CA: Sage.

²²¹Finlay, L. (2007). Qualitative research towards public health. In S. Earle, C. E. Lloyd, M. Sidell and S. Spurr (Eds.), *Theory and research in promoting public health* (pp. 273-296). London, UK: Sage.

²²²Backman, R., & Schutt, R. (2007). *The Practice of Research in Criminology and Criminal Justice*. London, UK: Sage.

i. Qualitative Methodology and the Research Question

This research provides a comprehensive, qualitative assessment of participating victims' expectations and experiences of the restorative justice process. Qualitative designs strive to provide a rich description of the world rather than measurement of standardised specific variables.²²³ The ability to provide rich detailed data is of value when considering past research reliance upon service delivery criteria, such as base measures of victim satisfaction, or basic values of recidivism.²²⁴ Qualitative data provides an 'authentic understanding of a social process',²²⁵ contributing to greater understanding of the context in which phenomena occurs, capturing elements of social life as participants experience it.²²⁶ Such an approach is utilised most effectively when the motives for research are explanation, description or evaluation, fitting with the inductive nature of this research. Such (qualitative) data is perceived as richer, more detailed, possessing greater depth and higher accuracy in depicting a true reflection of people's experiences, attitudes and beliefs, than data yielded through quantitative methods.²²⁷ By adopting a principally qualitative approach it was intended that this study would provide rich, detailed and in-depth information regarding victim understandings, perceptions and experiences of restorative justice practices.

A comprehensive understanding of victim expectations, knowledge and experience, as justified by the aims of this research, would not be possible through exclusive interpretation

²²³Patton, M. Q. (2002). *Qualitative evaluation methods*. Thousand Oaks, CA: Sage.

²²⁴Latimer, J., C. Dowden, et al. (2005). *The Effectiveness of Restorative Justice Practices: A Meta-Analysis*.; Strang, H. (2000). *Victims and Restorative Justice: The Canberra reintegrative shaming experiment*.; Umbreit, M. (1994). *Victim Meets Offender: The impact of restorative justice and mediation*.; Hoyle, C., Young, R., & Hill, R. (2002). *Proceed with Caution: An Evaluation of the Thames Valley Police Initiative*.; Vos, B., Umbreit, M., & Coates, R. (2006). 'Victim offender mediation: An evolving evidence-based practice'.

²²⁵Gubrium, J. & Holstein, J. (1997). *The New Language of Qualitative Method*. Oxford: Oxford University Press.

²²⁶Bachman & Schutt (2007). *The Practice of Research in Criminology and Criminal Justice*. London: Sage

²²⁷Backman, R., & Schutt, R. (2007). *The Practice of Research in Criminology and Criminal Justice*. London, UK: Sage.; Oakley, A. (2004). *Interviewing Women: A contradiction in terms*. . In C. Seale (ed.), *Social Research Methods: A reader*. London, UK Routledge.; Bryman, A. (1988). *Quantity and quality in social research*. London, UK: Unwin Hyman.; Denzin, N. K., & Lincoln, Y. (1994). *The discipline and practice of qualitative research*. In N. Denzin and Y. Lincoln (Eds.), *Handbook of qualitative research*. London, UK: Sage.; Patton, M. Q. (2002). *Qualitative evaluation methods*. Thousand Oaks, CA: Sage.

of quantitative data.²²⁸ Such limits are supported through assertions that facets of criminological enquiry cannot be pursued purely by quantitative approaches.²²⁹ Qualitative analysis is often utilised when investigating areas not readily applicable to quantitative assessment, such as participant's expectations and experiences.²³⁰ This approach, committed to a case-based position, which directs attention to the specifics of particular cases and examines the constraints of everyday social world seemed more appropriate than its quantitative alternative.²³¹

Interpretive sociology argues that the causal explanation of human behaviour is impossible without some understanding of the subjective status of the individuals concerned.²³² An understanding of the social phenomena as understood by the participants is of importance to this research as it addresses the extent to which their normative expectations and understandings may impact upon those experiences. Thus the individual's normative deliberations are of greater importance than attempts to understand the social phenomena through an interpretation of objectively visible and recordable facts, the initial premise of positivistic quantitative methodologies.²³³ Consequently, qualitative research was identified as the most appropriate framework due to its ability to generate a "rich depiction and strategic comparison across cases, overcoming the abstraction inherent in quantitative studies".²³⁴

²²⁸ Becker, H. S. (1996). *The epistemology of qualitative research*. Chicago, IL: University of Chicago Press.; N. K. Denzin, N. K., & Lincoln, Y. (1994). The discipline and practice of qualitative research. In N. K. Denzin and Y. Lincoln (Eds.), *Handbook of qualitative research*. London, UK: Sage.; Downes, D., & Rock, P. (2003). *Understanding Deviance*. Oxford, UK: Oxford University Press.

²²⁹ Coleman & Moynichan (1996) *Understanding Crime Data*. Buckingham: Open University Press

²³⁰ Giddens, A. (1984). *The constitution of society*. Cambridge, UK: Polity Press.; Lofland, J., & Lofland, L. (1995). *Analysing social settings*. Belmont, CA: Wadsworth.; Miles, M., & Huberman, A. M. (1994). *Qualitative data analysis: an expanded sourcebook*. London, UK: Sage.; Robson, C. (2002). *Real World Research*. Oxford, UK: Blackwell.; Mays, N., & Pope, C. (2000). Qualitative research in health care; assessing quality in qualitative research. *British Medical Journal*, 320, 50-52.; Finlay, L. (2007). Qualitative research towards public health. In S. Earle, C. Lloyd, M. Sidelland & S. Spurr (eds.), *Theory and research in promoting public health*. London, UK: Sage.

²³¹ Marshall, C., & Rossman, G. (2006). *Designing Qualitative Research*. London, UK: Sage.;

²³² Habermas, J. (1991). *The Structural Transformation of the Public Sphere: Inquiry into a Category of Bourgeois Society* (Studies in Contemporary German Social Thought): MIT Press; Reprint edition

²³³ Babbie, E. (2010). *The Practice of Social Research*. Belmont, CA: Wadsworth.; Berg, B. (2009). *Qualitative Research Methods for The Social Sciences*. Boston, MA: Pearson.; Corbin, J., & Strauss, A. (2008). *Basics of Qualitative Research*. London, UK: Sage.; Berger, Wolf & Ullmann, (1989).; Crabtree and Miller (1992).

²³⁴ Miles, M. & Huberman, A. (1994). *Qualitative data analysis*.

An interpretive research philosophy, focussing upon the explanation of social phenomena was utilised throughout this research. This reflects the epistemological assertions that an explanation of the effect of being criminally victimised can only be achieved by first recounting victims' statements and then identified common and recurring themes within these statements. A similar approach was utilised within this study, through recounting victim participants' expectations for the mediation process, their experiences of the mediation process and the extent to which those experiences matched their expectations. From this, common themes and issues were identified through their numeric occurrence and their importance, as subjectively perceived by the participants.

ii. A Case-Study Design and Inductive Research

Within the qualitative inductive approach selected for the research strategy a 'case-study' design was adopted as the overarching research strategy for this study. A case study method, for the purposes of this research involved an in-depth examination of a single instance or event: a case, providing the researcher with a systematic way of observing events, collecting data, analysing information, and reporting results. A case study design was adopted as an overarching research strategy, focussing upon a single restorative justice practice operating at two locations (A and B).

An overarching case-study design allowed for the combination of different data collection methods, and their subsequent triangulation.²³⁵ The integration of different perspectives provided the formation of detailed in-depth understandings delivering a

²³⁵Denzin, N. (1970). *The Research Act in Sociology* London, UK Butterworths.; Jupp, V. (2001). Triangulation. In E. McLoughlin & J. Muncie (Eds.), *Sage dictionary of Criminology*. London, UK Sage.; Mays, N., & Pope, C. (1996). Rigour in qualitative research. In N. Mays & C. Pope (Eds.), *Qualitative research methods in health care*. London, UK: BMJ Books.; Brewer, J. D. (2000). *Ethnography*. Buckingham, UK Open University Press.; David, M., & Sutton, C. (2011). *Social Research, an introduction*. London, UK: Sage.; de Witt, L., & Ploeg, J. (2006). Critical appraisal of rigour in interpretive phenomenological nursing research. *Journal of Advanced Nursing*, 55, 215-229.; Maguire, M. (2000). Researching street criminals. In R. King and E. Wincup (Eds.), *Doing Research on Crime and Justice*. Oxford, UK: Oxford University Press.

comprehensive and contextualised response to the research question. This research involved the detailed examination of a social phenomenon, specifically victim participation in restorative justice programmes, with the unit of focus within the overarching case study design designated as an individual restorative justice practice. Two locations were examined, location A and B. Within each location a sample was drawn from victim participants, within which the data collection was conducted. The use of multiple sources of data collection allowed for the triangulation of multiple perspectives to form comprehensive, in-depth understandings of that particular event.²³⁶ The case study approach allowed the research to focus upon specific practice of restorative justice, in pursuit of fuller exploration of victim expectations, experiences and the nexus between them. The adoption of one practice of restorative justice as a case, operating at two locations guarded against potential confounding factors. Such factors are particularly relevant when examining restorative justice due to the dramatic variation in restorative practices delivery, encompassing programmes such as indirect mediation, family group conferencing and healing circles. Whilst each practice is grounded (to varying degrees) in restorative theory, the divergence in implementation may have significant impact upon participant expectations and experiences, which this research sought to avoid.

Within the overarching case study design and qualitative methodology, an inductive approach was also utilised throughout this research.²³⁷ This encompassed the identification of important categories, themes and their relationships within the data through a process of

²³⁶Denzin, N. (1997). *Interpretive ethnography: ethnographic practice for the 21st century*. Thousand oaks, CA: Sage.; Denzin, N. (1989). *The research act: a theoretical introduction to sociological methods*. Englewood cliffs, NJ: Prentice Hall.; Fielding, N. & Fielding, J. (1986). *Linking Data*. London, UK Sage; Hammersly, M., & Atkinson, P. (1995). *Ethnography: Principles in Practice*. London, UK: Sage.; Seale, C. (1999). *The quality of qualitative research*. Oxford, UK Blackwell.; Silverman, D. (1993). *Interpreting Qualitative Data: Methods for analysing qualitative data*. London, UK: Sage.

²³⁷Schwandt, T (1997). *Qualitative Inquiry*. Thousand Oaks, CA: Sage; Miller, G & Dingwall, R (1997). *Context and Method in Qualitative Research*. London: Sage.; Bamberger, M. (ed.), (2000). *Integrating Quantitative and qualitative Research in Development Projects*, Washington DC; World Bank; Bryman, A. (2004). *Social Research Methods*, Oxford University Press. Oxford, UK: OUP.

discovery. This allowed the examination of social interaction, free from constraints of a hypothetico-deductive framework, where investigation is directed by the pre-defined theory. An inductive approach allows for consideration of all gathered information, from which themes and theories may emerge, being grounded within the data itself.

Inductive methods, utilised predominantly in the pursuit of the previously unstudied or unknown,²³⁸ appeared appropriate for this research as it addressed topics unexplored within existing literature. The research was therefore guided by exploratory questions as opposed to the deduction of a specific pre-determined theory. Those exploratory questions focussed upon victim expectations and experiences of the restorative justice process.

iii. Selection of the Case Study

The following section details the research setting in which the data collection methodology described above were implemented. The steps involved in accessing the restorative programmes are also detailed. Following this description, the implementation of data collection instruments is described within section 6.

The first obstacle to overcome was determining which institutions conducted restorative justice practices, identifying their physical location and appropriate contacts. From an investigation into this it was discovered that several different institutions conducted restorative justice to varying degrees. This reflects those comments within the preceding chapter regarding ‘culture carriers’ within restorative practices and the extent to which such commodification of restorative theory by such individuals may impact upon participants’ experiences. Those institutions in which restorative practices were implemented included Young Offender Teams (YOT’s), coordinated centrally by the Home Office Youth Justice

²³⁸ibid.

Board, with restorative justice provided as laid out in the Crime and Disorder Act 1998.²³⁹ This form of restorative justice, provided by regional Young Offender Teams was the most centrally orchestrated and consistent throughout England and Wales, although responsibility for each individual scheme was located with each Young Offender Team Manager and the extent to which each scheme implemented these restorative practices varied dramatically. In addition to restorative practices conducted by Young Offender Teams, some Probation services also included elements of restorative justice and mediation in their work with Offenders. Although, unlike YOT's work such initiatives were not part of a national framework and their implementation was reliant upon each individual probation service.

It was also discovered that individual prisons implement restorative practices. The most prominent scheme was that conducted by Cardiff Park Prison, although the number of prisons and subsequent participants was extremely low. The few prison services which do conduct such schemes depart from 'true' restorative justice, by utilising surrogate victims rather than the victim of the specific offender. Victims and offenders are grouped into categories such as 'theft' and mediating between those involved in the same 'type' of offence. Consequently, such practices were not appropriate for the objectives of this research. Such implementation reflects the diversity of restorative practices discussed within the preceding chapter and illustrates the inherent problems within empirical research regarding comparability of findings.²⁴⁰

Victim Support, whilst not conducting restorative justice programmes themselves often provide a route for victims who desire such interaction to participate in such schemes. Police Constabularies conduct victim-offender-mediation, under the remit of the 'Restorative Justice Coordinator'. However, the degree to which restorative justice is pursued within each constabulary is decided by the individual force, its Chief Constable and ultimately the

²³⁹ Crime and Disorder Act 1998, Part IV Dealing With Offenders, Chapter 1 England and Wales, Young Offenders: non-custodial sentences, Section 67, Reparation Orders.

²⁴⁰ See Chapter I, Section 4, V

available funding opportunities. This results in some forces implementing significant restorative practices, whilst others implement little or no restorative practices. Out of the different forces contacted all the situations mentioned above were encountered, with the most common restorative practice being ‘Street RJ’ and ‘Youth Restorative Disposals’ (YRD’s), reminiscent of past restorative cautioning.²⁴¹ Further differentiation between those forces choosing to pursue restorative justice existed through the availability of the restorative practice. Again this selection criteria differed between individual Forces, with some choosing to focus restorative justice upon juvenile or first time offenders, whilst other forces offer restorative practices regardless of the age of the offender (excluding serious offences e.g. murder and all sexual offences).

4. The Research Setting, Commodification of Restorative Justice and Culture Carriers.

This research was conducted within a single restorative justice practice implemented at two locations within England. The commodification of restorative justice theory and the selection of individual aspects of the philosophy by culture carriers within each practice, (outlined above), necessitated the identification of one restorative practice in which to conduct this research. The study of a single practice operating at two locations was seen as reducing the likelihood of potential differences between data collected within Location-A (A000) and Location-B (B000) resulting from the different implementation between the two practices. Such differences may further exacerbate the variation in victim experiences between different practices, arising from the commodification of restorative justice described within chapter 1. With facilitators acting as culture carriers, selecting aspects of the restorative paradigm to pursue, those aspects of restorative culture necessarily

²⁴¹Young, R., & Wilcox, A., (2007). How Green was Thames Valley?: Policing the Image of Restorative Justice Cautions. *Policing and Society*. 17(2), 141-163.

influence the understanding and subsequently the experiences of participants. This is illustrated through divergences between practices focussed upon victim restoration and those emphasising offender rehabilitation, with the resulting difference between the actions of those culture carriers within each practice. In an attempt to minimise any confounding factors arising from such commodification resulting from culture carriers actions within different practices (detailed within chapter 1) this research was conducted within the same practice, implemented across two locations.

Traditionally, restorative initiatives have been delivered through Police Constabularies,²⁴² court ordered sentences or through voluntary organisations originating from religious backgrounds.²⁴³ The programmes in which this research was undertaken offer a ‘third way’²⁴⁴ for restorative justice implementation. The programme exists separately from the Police Constabulary, under the control of an independent co-ordinator, responsible to the local government authority. Funding is secured from a diverse range of sources including central government, the Police Service, charities, emergency services and local government. Whilst a seconded police officer works within the restorative justice practice to support the co-ordinator, they remain subordinate to the co-ordinator who retains responsibility for case approval, volunteer training and the allocation of cases to facilitators. This third way or hybrid existence allowed for an effective working relationship with the necessary referral organisation (the Police Constabulary) to ensure a viable number of referrals,²⁴⁵ whilst enabling the restorative practice to remain separate from the Police Force. This hybrid

²⁴²Hoyle, C., Young, R., & Hill, R. (2002). *Proceed with Caution: An Evaluation of the Thames Valley Police*; Strang, H., et al. (1999) Experiments in restorative policing: a progress report on the Canberra Re-integrative Shaming Experiments (RISE). Research School of Social Sciences, Australian National University. <http://www.aic.gov.au/rjustice/rise/progress/1999-3p.pdf>

²⁴³Hadley, M. (2006). Spiritual Foundations of restorative justice In, Dennis Sullivan and Larry Tifft (eds.), *Handbook of Restorative Justice A Global Perspective* (pp.174-185). London and New York: Routledge. Taylor and Francis Group.

²⁴⁴ Restorative Justice as a Pathway to Forgiveness, Conference paper, forgiveness; probing the boundaries, International Conference, Mansfield college, oxford, 2010, available online at <http://www.inter-disciplinary.net/wp-content/uploads/2010/06/armstrongpaper.pdf>

²⁴⁵ Case study A has been in operation for seven years, since its creation in 2005. During this time (up to 2011) it had processed over 500 referrals.

approach to the integration of restorative justice practices within the traditional criminal justice system appears to depart from the linear binary implementation discussed within the maximalist-purist debate.²⁴⁶ Such implementation represents restorative justice implemented as a joint action between voluntary and statutory agencies,²⁴⁷ which relies upon participant consent.

Cases were received by the restorative programme from the local police constabulary. Following referral guidance notes, any case which initially appeared to be appropriate for restorative justice disposal was referred to the programme. The Co-ordinator then made an assessment of each case and determined whether the case was viable for the restorative justice process. This assessment took account of the nature of the offence and its severity based upon the Gravity Factors Matrix, developed by The Association of Chief Police Officers (ACPO). Following this matrix, all offences described as 'serious offences' such as homicide and sexual offences were excluded. Furthermore, all cases involving any sexual offence were also excluded. Where the case was not appropriate it was referred back to the police and was processed through the traditional system.

Additionally, the longevity and media coverage of the restorative practice at Location-A is notable. Operating since 2005, the practice has facilitated over 500 restorative justice outcomes. Furthermore, it occupies a rather unusual position of having received significant local media attention within its immediate geographical area, regularly appearing in local news print and undertaking public awareness activities within local high streets and shopping areas. This relatively high level of media attention and public activity is important for several assertions within this thesis, specifically the awareness of victims prior to their referral. The

²⁴⁶ McCold, P. (2000). Toward a Holistic Vision of Restorative Juvenile Justice: A Reply to the Maximalist Model. *Contemporary Justice Review*. 3(4), 357.; Walgrave, L. (2000). How Pure Can a Maximalist Approach to Restorative Justice Remain? Or Can a Purist Model of Restorative Justice Become Maximalist? *Contemporary Justice Review*. 3(4), 415-432.

²⁴⁷ Whyte, B. (2003) 'Young and Persistent: Recent Developments in Youth Justice Policy and Practice in Scotland'. *Youth Justice*, 3(2), 74-85.

following section details the specific practice, the role of the facilitator and the methods of preparing participants.

An individual facilitator is assigned to each case accepted by the co-ordinator. The programme utilised trained volunteers as facilitators, each facilitator having completed training accredited by the International Institute of Restorative Practice (IIRP). It is then the responsibility of the facilitator to contact each of the parties (victim and offender) involved in the case, both to explain the function of the restorative programme and to secure initial consent for participation. If the victim and offender both agree to take part the case can proceed, with preparation meetings held between the facilitator and each of the parties individually. During this preparatory stage the process is explained, the restorative meeting itself is discussed, the script used during the meeting is examined and participants are able to ask the facilitator questions. It is made clear during the preparatory meeting that at the end of the meeting an agreement will be made, the contents of which will be determined during the meeting. It is also explained that this agreement allows the offender to avoid a criminal record but, if breached, allows for the offender to be referred back to the police for the original offence to be prosecuted under the traditional criminal process. If an individual expressed reticence towards participation in the restorative justice process a facilitator may nevertheless meet with them to describe the process in greater detail and attempt to secure their engagement. Such preparatory meetings will usually occur at the participant's home.

At the restorative meeting itself, the facilitator arrives first to prepare the room and arrange the physical layout. The positions of all participants are determined in advance of the meeting, with each participant allocated a location within a circle of chairs. This reflects restorative philosophy,²⁴⁸ seeking to avoid stigmatisation and labelling through the separation

²⁴⁸ Christie, N. (1977). *Conflicts as Property*; Zehr, H. (1990). *Changing Lenses*; Marshall, T. (1999). *Restorative Justice: An Overview*

of the offender,²⁴⁹ and creating an environment of prospective resolution.²⁵⁰ Specifically parallels can be drawn between the orchestration of the restorative meeting and circles of forgiveness,²⁵¹ or family group conferencing.²⁵² Within this circle sit the facilitator, the victim, the offender each of their supporters and a police representative (commonly a Police Community Support Officer). The chairs within the circle are distributed equally, with the small number of participants resulting in small circles. Furthermore, no tables are placed within the circle, deliberately avoiding the separation of participants. Other than the name labels, each position would appear the same as any other, again in an effort to avoid the labelling or stigmatising effects associated with the traditional criminal justice process.²⁵³ The meeting itself is conducted following a script, with questions led by the facilitator, designed by the IIRP to precipitate a restorative outcome.²⁵⁴ At the conclusion of the panel the contents of an Acceptable Behaviour Contract (ABC) are agreed upon and the document signed to demonstrate the offender's compliance. Often such ABC agreements contain undertakings to restrain from similar behaviour, repairing physical damage or providing payment for such repair. The implementation of the restorative practice was consistent across both locations.

5. Access to Gatekeepers and Barriers to Negotiation

Within the overarching case study research design a single practice of restorative justice was identified as the case focus. This resulted in identifying a practice which was delivered at two locations, conforming to the requirements of being a 'fully restorative' practice.²⁵⁵ The reciprocity to the research was also a relevant factor. The issue of access to

²⁴⁹ Braithwaite, J., (1989). *Crime Shame and Reintegration*

²⁵⁰ Marshall, T. (1999). *Restorative Justice: An Overview*

²⁵¹ Grönfors, M (1992). *Mediation: A Romantic Ideal or a Workable Alternative*

²⁵² Braithwaite, J., & Mugford, S. (1994).; McCold, P., & Wachtel, T. (1998).; Sherman et al (1998).

²⁵³ Mead, G. (1934). *Mind, Self, and Society*. Chicago: University of Chicago Press.; Becker, H. (1963). (revised 1973). *Outsiders*. New York: Free Press.; Goffman, E. (1982). *Interaction Ritual*. New York: Pantheon Books.

²⁵⁴ See appendix A for the script.

²⁵⁵ Van Ness, D. (2002). *Creating Restorative Justice Systems*. In L. Walgrave, (ed.), *Restorative Justice and the Law* (pp. 130-149). Devon, UK: Willan Publishing.; Van Ness, D. (2002). *The Shape of Things to Come: A*

participants of empirical research is often described as a ‘thoroughly practical issue’,²⁵⁶ commonly reliant upon variables outside of the researcher’s control. Due to the limited implementation of restorative justice practices within the criminal justice system, convenience sampling methods were adopted.²⁵⁷ The two locations in which the research was conducted were selected due to their use of what may be described as fully restorative practice.²⁵⁸ From a practical perspective the schemes willingness to grant access to victim participants was also a significant factor in its selection as the research context.²⁵⁹ As the practices operated as separate organisations from other criminal justice agencies access was sought directly from the co-ordinator of the scheme. Such negotiations required assurances from the researcher that all data collected would be anonymous with no data being capable of identifying the individual victim. Informed consent of each victim participant was also a key consideration of the practice co-ordinators. Convenience sampling was justified due to the availability of research participants, being difficult to contact, in addition to the research focussing upon generating an in-depth analysis, reducing the importance of representation. It is suggested that through limiting a particular study to a single setting, the researcher is able to construct a more intensive portrait of the actors and activities in that setting.²⁶⁰ As detailed within the preceding chapter, the latent ambiguity of restorative justice theory and the subsequent diversity of practices claiming to operate under ‘restorative justice’ principles

Framework for Thinking About a Restorative Justice System. In E. Weitekamp and H. Kerner, *Restorative Justice: Theoretical Foundations* (pp. 1-20). Devon, UK: Willan Publishing.; McCold, P. (2000). Toward a Holistic Vision of Restorative Juvenile Justice: A Reply to the Maximalist Model. *Contemporary Justice Review*. 3(4), 357.

²⁵⁶ Hammersly, M., & Atkinson, P., (1995). *Ethnography: Principles in Practice*. London: Routledge

²⁵⁷ Levy, P. & Lemeshow, S. (1999). *Sampling of Populations: Methods and Applications*, New York: Wiley-Interscience.; Rao, P., Rao, Poduri S. & Miller, W. (2000). *Sampling Methodologies with Applications*. New York: Lewis Publishers, Inc.; Thompson, S. (2002). *Sampling*. New York: John Wiley and Sons.; O’Leary, Z. (2005). *Researching Real World Problems – A Guide to Methods of Inquiry*. London: Sage

²⁵⁸ Van Ness, D. (2002). Creating Restorative Justice Systems; Van Ness, D. (2002). *The Shape of Things to Come: A Framework for Thinking About a Restorative Justice System*.

²⁵⁹ Bryman, A. (2008). *Social Research methods*. Oxford: Oxford University Press; King, R. & Wincup, E. (2007). *Doing research in criminal justice*. Oxford: Oxford University Press.

²⁶⁰ O’Leary, Z. (2005). *Researching Real-World Problems; A Guide to Methods of Inquiry*. London: Sage.

have necessitated the development of a ‘restorative justice continuum’,²⁶¹ thus enabling the commodification of the restorative theory previously described within Chapter I, 4, iv. Through identification of central features of restorative practice, such a continuum is capable of providing an assessment of the extent to which each practice corresponds with ‘complete’ restorative theory, or the extent to which aspects of the theory are selected by individual practitioners acting as culture carriers (detailed within section 4 above). Utilising the continuum, practices which could be described as ‘fully restorative’ in nature were sought, as the purpose of the research was to establish victim expectations and experiences of true restorative practices. Such practices would encompass those complying with the key features of restorative theory, including stakeholder involvement, voluntary participation and direct victim-offender interaction.²⁶² Following this, those practices which, whilst utilising the label of restorative justice, but which are described as being ‘less restorative’²⁶³ were excluded. This included practices which relied exclusively upon shuttle mediation and those which utilised ‘surrogate victims’.

6. Data Collection

Following from the description of the research section, this section identifies the data collection instruments utilised throughout the empirical stages of this research. The use of mixed method data collection encompassing primarily qualitative data supplemented by limited numerical illustrations is justified. The construction of specific data collection

²⁶¹Newburn, T. (2007). *Criminology*

²⁶²Umbreit, M. (1994). *Victim Meets Offender*

²⁶³H., Jones, N & Nestor, R. (2011). Sentencing circles in Canada and the Gacaca in Rwanda: A comparative analysis. *International Criminal Justice Review*. 21(1), 39-66.; Hargreaves, J. (2009). 'Beyond rehab' - Where does the prison fit? *Current Issues in Criminal Justice*. 21(1), 148-153.; Morris, A. & Maxwell, G. (2001). *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*. Oxford: Hart Publishing.; Wachtel, T. & McCold, P. (2001). Restorative Justice in everyday life. In H. Strang & J. Braithwaite, *Restorative Justice and Civil Society*. Cambridge: Cambridge University Press. Daly, K. (2000). Revisiting the Relationship between Retributive and Restorative Justice. In H. Strang & J. Braithwaite (eds.), *Restorative Justice: From Philosophy to Practice*. Aldershot: Dartmouth.

instruments and their subsequent deployment is described, again being justified through pursuit of the research aims previously stated.

Throughout this research, both questionnaires and semi-structured interviews were employed within a 'before and after' research design were utilised. The aims of the research, examining expectations and experiences, necessitated measurement both prior to and subsequent to a victim's engagement in the restorative justice process, with individual data collection instruments selected in pursuit of that objective.

This research used multiple data collection methods, attempting to encompass all relevant aspects of their restorative justice participation.²⁶⁴ The data collected through these methods allowed for limited triangulation, attempting to address those limitations inherent within a single method approach.²⁶⁵ The following subsections examine both of these data collection instruments in turn, exploring the reasons for their selection and the extent to which the method was deployed in practice.

i. Questionnaires

Primarily, the data generated through questionnaires was intended to inform subsequent discussion within the qualitative semi-structured interviews. They provided valuable data in relation to the expectations, preparation and comprehension of participating victims regarding their engagement in the restorative process. This data was essential to address the initial aim of the research, an assessment of the expectations of participating victims. Questionnaires were most appropriate due to their method of delivery, being able to collect relevant data prior to victims' engagement in the restorative justice process, thus

²⁶⁴Hammersly, M., & Atkinson, P. (1995). *Ethnography: Principles in Practice*. London, UK: Sage.; Seale, C. (1999). *The quality of qualitative research*. Oxford, UK Blackwell.; Silverman, D. (1993). *Interpreting Qualitative Data: Methods for analysing qualitative data*. London, UK: Sage.

²⁶⁵Jupp, V. (2001). Triangulation. In E. McLoughlin and J. Muncie (Eds.), *Sage dictionary of Criminology*. London, UK Sage.; Denzin, N. (1970). *The Research Act in Sociology*. London, UK: Butterworths.

avoiding methodological limitations of collecting expectation data ex post facto.²⁶⁶ The measurement of victim expectations necessitated data collection at a point prior to their engagement in the process, to avoid methodological problems present when attempting to measure retrospective expectations and inherent problems regarding recall bias.²⁶⁷ Additionally, questionnaires provided the best method for the collection of specific information, such as demographic data presented within Table 2.1 in addition to data further detailed below.

Within the questionnaire itself numerous methods of assessment were utilised for the fulfilment of differing objectives. Basic demographic information of each participant was collected using closed questions at the beginning of the questionnaire. This included information regarding the offence which resulted in their referral to the restorative justice programme employing open questioning, later categorised by offence. Open questions were additionally utilised where participants were invited to provide additional information following a closed question, such as those areas of the restorative process of which they remained unsure, if there was anything that should happen during the process which does not currently occur, or what is required for the restorative process to appropriately deal with the offence. Primarily however, the questionnaire was comprised of closed questions assessing victims awareness of the restorative process prior to their involvement, what they believe would happen during the process and what they would like to happen. A Likert-type response was utilised for select questions, assessing the extent to which participants felt each outcome was likely to occur. This included the likelihood of receiving an apology, for the apology to be genuine, for the damage to be repaired and reassurances against future offending. This Likert-type scaled measurement,²⁶⁸ would allow for any variations in

²⁶⁶ Coughlin, S. (1990). Recall bias in epidemiologic studies. *Journal of Clinical Epidemiology*. 43 (1), 87–91.

²⁶⁷ Oppenheim, A. (1992). *Questionnaire design, Interviewing and Attitude Measurement*. London: Continuum International Publishing.

²⁶⁸ Foddy, W. (1993). *Constructing Questions for Interviews and Questionnaires. Theory and Practice In Social Research*. Cambridge, UK: Cambridge University Press.

perceived likelihood to be reflected (either increased or decreased probability of the designated outcome) to be recorded, whereas nominal closed questions would only allow for the recording of the outcomes occurrence, regardless of its perceived probability.²⁶⁹ Throughout the questionnaire items were constructed in an attempt to avoid bias resulting from the use of leading or persuasive language with all questions constructed linguistically neutral.

The questionnaires were distributed following the preparatory meeting conducted between the facilitator and the victim, over a period of 12 months. During this time each victim participant in the restorative justice programme was approached to engage in this research project, with the exception of those individuals who fell within the exclusion criteria outlined previously. This provided the most appropriate point of access for both delivery and the fulfilment of the questionnaires objectives, specifically the measurement of victim understanding, expectations and preparation regarding the restorative justice process prior to their engagement. The researcher was present during the preparatory interviews with the victim and facilitator and following its conclusion, and the departure of the facilitator, the research was explained, information sheets were provided to the victim and, when they consented, the questionnaire was distributed. The presence of the researcher throughout the preparatory interview enabled a greater understanding of the context within which expectations were formed. Being present whilst the facilitator described the process and objectives of the restorative practice allowed the researcher to identify any errors in explanation or any differences in objectives described by different facilitators, with the potential impact upon victim expectations and experiences subsequently explained through recognition of these differences. The distribution and completion of questionnaires in the absence of the restorative facilitator was necessary to minimise the potential impact of their presence upon victim respondent's answers. Furthermore, throughout their completion the

²⁶⁹Gillham, B. (2000). *Developing a Questionnaire*. London, UK: Continuum.

researcher continued to emphasise their independence and alleviate any concerns held by participants regarding the content of their responses and anonymity. The questionnaires were completed whilst the researcher was present, to enable any questions the participant may have to be answered quickly and facilitate quick completion. This method of distribution minimised the non-response bias often encountered within questionnaire based research. It is well accepted within methodological literature that non-responsiveness is exacerbated with the use of postal questionnaires.²⁷⁰ Whilst research administered distribution was utilised, it remained necessary to estimate the extent of non-responsiveness prior to the commencement of the research, so that adequate contingency plans were implemented, including the distribution of additional numbers of questionnaires. The average response rate for questionnaires lies at approximately 30%,²⁷¹ however completion rates experienced during this research are significantly higher, at 92%. Reasons for non-completion were due to time constraints, specifically due to employment or child care commitments.

ii. Interviews

Victim participants were interviewed following the conclusion of their restorative meeting. The location of the interview has been identified as potentially impacting upon participant engagement, their responses, and responder bias.²⁷² The interview often occurred shortly after the mediation process and within the same building. The aims of this research, to determine victim experiences of restorative process, required a prompt interview, to minimise recall bias.²⁷³ As the context of this research project was undertaken within a criminal justice institution, it became important to stress the neutrality of the researcher and their

²⁷⁰ Creswell, J. & Clark, V. (2011). *Designing and Conducting Mixed Methods Research*. London, UK: Sage.

²⁷¹ Shipman, M. (1997). *The limitations of social research*, London: Longman.

²⁷² Neuman, W. (2006) *Social Research Methods, Qualitative and Quantitative Approaches*. London, UK: Pearson.; Sullivan, T. (2001). *Methods of Social Research*. London, UK; Wadsworth Publishing; Alasuutari, P., Bickman, L. & Brannen, J. (2009). *The Sage Handbook of Social Research Methods*. London, UK: Sage.

²⁷³ Oppenheim, A. (1992). *Questionnaire design*.

independence from the scheme itself. This was achieved through written explanation via the information sheets and consent forms distributed among participants, in addition to repeated verbal explanations regarding the status of the researcher, being independent from the restorative justice scheme.²⁷⁴ The interviews were conducted in different rooms to the restorative justice meeting, again in an attempt to establish independence. Throughout this research interviews were audio recorded, to avoid the disruption created by written notes.²⁷⁵ During the interviews the researcher maintained a log of what were perceived as important visual reactions and recorded any non-audible reactions made by the participants which may inform their recorded comments.

The interviews themselves were of a semi-structured nature. This involved the use of an interview schedule, detailing topics of conversation identified through the responses of the pre-process questionnaires. Specifically, the interview schedule addressed the overall experiences of the participant, aspects of the process which were experienced negatively, aspects which were valued, and importantly, the relationship between their expectations and experiences. The schedule was relied upon to guide the interview, whilst providing significant freedom in questioning the victim participant. This was intended to allow the victim participant to discuss those elements of their experiences which were of greatest importance to them, in addition to exploring new concepts as they emerged during the interview.²⁷⁶ Unstructured or semi-structured approaches in interviews have been described as being of great value in further developing understanding and knowledge.²⁷⁷ The primary objective for the interview process was to fulfil the central aim of this thesis, to determine the relationship between victim expectations and experiences of restorative justice. The interview provided detailed discussion regarding participants' experiences of the restorative process,

²⁷⁴ Adams, A. (2000). Suspect Data: Arresting Research. In R. King & E. Wincup (eds.), *Doing Research on Crime and Justice*. Oxford: Oxford University Press.

²⁷⁵ Bachman, R., & Schutt, R. (2007). *The Practice of Research in Criminology and Criminal Justice*. London: Sage.

²⁷⁶ Bryman, A. (2004). *Social Research Methods*. Oxford: Oxford University Press.

²⁷⁷ Goodey, J. (2000). Biographical Lessons for Criminology. *Theoretical Criminology* 4, 473-98.

specifically investigating the sources of victim satisfaction or disappointment, and the relationship between unfulfilled expectations. Qualitative data was most appropriate for the fulfilment of the objectives of this research for a number of reasons, identified below. Interviews create a unique face to face social interaction between interviewer and respondent. Their advantages lie in the fact they can be significantly longer than mail and phone surveys, in addition to allowing greater exploration of emergent themes.²⁷⁸ The role of the researcher allows the order of questions, and the manner of questioning to be controlled, allowing greater exploration of specific areas of interest and offering opportunities for clarification of responses.

The personal nature of an interview necessitates considerations regarding the subject's perceptions of the researcher, through the use of language, interviewer's posture, their clothing and their attitude. A consensus exists that the most appropriate image to project within a face to face interview is that of a professional image, whilst simultaneously conveying sympathy.²⁷⁹ In addition to sensitivity, interview bias was avoided through the use of non-directive probes such as "can you tell me more?" when seeking elaboration and clarification of responses. This was intended to avoid leading the respondent, influencing their self-expression, thus resulting in influenced reactions. The appropriateness of interviews in the context of this, exploratory, inductive research project is emphasised through past studies which demonstrate that work of an exploratory nature is best fulfilled through direct interviews.²⁸⁰ Furthermore, the physical location of the interview in addition to the emotional status of the respondent can also be monitored and the questions, approach and demeanour of the interviewer can be amended appropriately. As qualitative research is concerned with

²⁷⁸Carbetta, P. (2003). *Social Research: Theory, Methods and Techniques*. London: Sage.

²⁷⁹Bachman, R., &Schutt, R. (2007).*The Practice of Research in Criminology and Criminal Justice*. London: Sage.

²⁸⁰Becks, R. (1999). Rape from afar: men exposing to women and children. In F. Brookman, L. Noaks&E.Wincup (eds.),*Qualitative Research in Criminology*. Aldershot: Ashgate.

construction of reality, focussing upon the participants of the projects chosen field,²⁸¹ qualitative methods actively look for the means to enable such participants to share their experiences, attitudes and belief. Semi-structured interviews were therefore conducted with the intention of providing detailed data “... in achieving understandings of delicate and complicated processes of social life”.²⁸²

iii. Direct Observation

Direct observation was used as a supplementary method of data collection.²⁸³ Every preparatory interview and restorative panels were observed. Such observation allowed the researcher to better contextualise the comments of victim participants.²⁸⁴ Additionally, the observation of the preparatory interview and subsequent restorative panel enabled the researcher to identify any additional factors which could impact upon victim participant’s expectations and experiences of the process,²⁸⁵ such as incorrect explanation of the process by the facilitator, or the over optimistic depiction of the process to secure victim engagement. Throughout these observations contemporaneous notes were taken.²⁸⁶ These notes identified those aspects of the interaction which appeared relevant to the aims and objectives of this research, such as any erroneous comments by the facilitator, the demeanour of the offender during the restorative panel and the initial reactions of the victim to the proposed outcome of the restorative process. These notes were then relied upon when coding victim participants’ responses to the semi-structured qualitative interviews, placing those comments in context

²⁸¹ Flick, H. (1998). *An Introduction to Qualitative Research*. London: Sage

²⁸² Noaks, L., & Wincup, E. (2004). *Criminological Research – Understanding Qualitative Methods*. London: Sage.

²⁸³ Becker, H. & Geer, B. (1957). Participant Observation and Interviewing: A Comparison, *Human Organization*, 16, 28-32; Patton, M. (1990). *Qualitative Evaluation and Research Methods*. 2nd ed. Newbury Park, Calif: Sage Publications.

²⁸⁴ O’Leary, Z. (2005). *Researching Real-World Problems, a guide to methods of inquiry*. London, UK: Sage; Spradley, J. (1980). *Participant Observation*. New York: Holt, Rinehart and Winston.

²⁸⁵ Bryman, A. (2012) *Social Research Methods*. Oxford, UK: Oxford University Press; Wholey, J., Hatry, H., & Newcomer, K. (1994). *Handbook of Practical Program Evaluation*. San Francisco: Jossey-Bass.

²⁸⁶ David, M. & Sutton, C. (2011). *Social Research, an introduction*. London, UK: Sage.

and supplementing the responses with additional contextual information. This was particularly pertinent when addressing victim participants' comments regarding offender behaviour and reaction to the restorative process.²⁸⁷

7. Selection of Participants

Following the identification of a relevant restorative justice practice as the unit of focus for the overarching case study design, victims engaging in the programme were selected for participation in this research. Within both locations the selection of individuals again utilised non-probability sampling. The adoption of non-probability sampling was justified through the nature of this research. As the focus of this research was not representative of a larger, general population,²⁸⁸ random sampling strategies were not necessary for the objectives of examining victim expectations and experiences. This was supported by the limited availability of restorative practices.

The target population of this research comprised of victims who participate within restorative justice programmes. This provided a closed population,²⁸⁹ from which a population list was generated, utilising data held by the relevant gatekeeper.²⁹⁰ Following this, a population study was be utilised within an operational time frame to enable a start and end point to be identified from a continuous service.²⁹¹ When determining the sample size for the empirical work the researcher accounted for several factors. This included the amount of time available in which to conduct this study, the resources available during the course of the

²⁸⁷Neuman, W. (2007). *Basics of Social Research, Qualitative and Quantitative Approaches*. London, UK: Pearson.

²⁸⁸Field, A. (2003). *How to design and report experiments*. London: UK: Sage.; Robson, C. (2011). *Real world research*. Oxford, UK: Blackwell Publishers.

²⁸⁹Regal, R., & Hook, E., (2006). The effects of model selection on confidence intervals for the size of a closed population. *Statistics in Medicine*, 10 (5), 717-721.

²⁹⁰Burgess, R. (1984). *In the field: an introduction to field research*. London, UK: Allen and Unwin.; Hammersly, M., & Atkinson, P. (1995). *Ethnography: Principles in Practice*. London, UK: Sage.

²⁹¹Bryman, A. (2004). *Social Research Methods*

project, any limitations inherent with the methodology selected and the predicted 'non-response rate'.

In an attempt to minimise this level of non-response, the research employed several approaches identified within methodological literature.²⁹² Firstly, when distributing the questionnaires recipients were also provided with an information sheet, detailing the aims and objectives of the research, its justification and their (potential) role within the project, to ensure each participants informed consent.²⁹³ The questionnaires themselves were designed to be accessible, and facilitate swift completion they were designed in a clear and accessible manner. It was designed not to appear as a large or onerous task, commencing with easy questions whilst becoming progressively more demanding. Finally the delivery method, being distributed by the researcher and completed at the point of distribution (detailed below) was selected to minimise issues such as elevated non-response rates.²⁹⁴ The impact of such measures resulted in minimal non-responsiveness with the majority of individuals invited to engage in the research consenting to participate. Within the questionnaire stage of the empirical work participant engagement rested at 92%, with lower levels of engagement during the interview stage. Of those individuals invited to take part with interviews 89% participated. The main reasons for non-participation during the interview stage were a result of time constraints resulting from child care and employment.

Due to the adoption of a 'non-probability sampling' method through convenience sampling a key limitation would be the inability of the researcher to utilise the data generated through convenience sampling as a foundation upon which to generalise their findings and

²⁹²Sullivan, T. (2001). *Methods of Social Research*. London, UK; Wadsworth Publishing.; Perceman, E. & Curran, S. (2006). *A Handbook for Social Science Field Research. Essays and Bibliographic Sources on Research Design and Methods*. London, UK: Sage.; David, M. & Sutton, C. (2011). *Social Research, An Introduction*. London, UK: Sage.

²⁹³Haney, C., Banks, C., & Zimbardo, P. (1973). Interpersonal Dynamics in a simulated prison. *International Journal of Criminology and Penology*, 1, 69-97.; Humphreys, L. (1970). *Tea room trade: a study of homosexual encounters in public places*. . Chicago, IL: Aldine.; Milgram, S. (1974). *Obedience to Authority: An Experimental View*. New York, NY: Harper and Row.; Parker, H. (1974). *View from the boys: a sociology of downtown adolescents*. London, UK: David and Charles.; Rosenhan, D. (1973). On being sane in insane places. *Science*. 179 (70), 250-258.

²⁹⁴Sullivan, T. (2001). *Methods of Social Research*. London, UK: Wadsworth Publishing.

conclusions.²⁹⁵ The information generated is applicable only to that individual sample, the context in which it was collected and the individuals consulted. Whilst providing a detailed insight into the sample's views and attitudes towards the discussed topics it is not possible to further generalise such findings. This limitation is explicitly recognised within extant literature with such a sampling strategy resulting in the inability to generalise the findings to wider populations,²⁹⁶ however as this is not an objective of this research its limitation is mitigated.

The above sampling techniques provided an aggregate total of 97 questionnaires across both locations, with 45 post process interviews. The demographics of the sample are provided within the following table:

Table 2.1 – Demographic data of research participants

Location A				
Age				
18-29	30-39	40-49	50-59	60-69
18	14	19	7	2
Gender				
Male		Female		
35		25		
Offence Referral				
Assault	Theft	Verbal Abuse	Criminal Damage	
20	9	7	24	
Prior Victimisation				
Yes		No		
11		49		

Location B				
Age				
18-29	30-39	40-49	50-59	60-69
15	9	7	3	3
Gender				
Male		Female		
21		16		
Offence Referral				
Assault	Theft	Verbal Abuse	Criminal Damage	
12	13	6	6	
Prior Victimisation				
Yes		No		
6		31		

²⁹⁵ Field, A. (2003). *How to design and report experiments*. London: UK: Sage.

Robson, C. (2011). *Real world research*. Oxford, UK: Blackwell Publishers.; Tryfos P. (1996) *Sampling Methods for Applied Research, Text and Cases*. Chichester, UK: Wiley.

²⁹⁶ Bryman, A. (2004). *Social Research Methods*.

i. Summary of the Precautions Taken to Ensure that Participants Freely Consented

This section details the steps taken by the researcher to ensure informed consent of participants, continuing ethical considerations throughout the empirical work and subsequent data protection. Conducting research involving human participants necessarily requires important ethical considerations which "cannot be ignored in that they relate directly to the integrity of a piece of research and of the disciplines that are involved".²⁹⁷

This research was conducted in complete compliance with the ethical approval granted by the University of Chester, School of Law Research Ethics Committee. Such considerations included acceptance that, whilst unlikely, it was possible that some participants may experience adverse effects during their participation. In accordance with the ethical standards of the Economic & Social Research Council (E.S.R.C.) Framework (2010)²⁹⁸ all subjects were advised as to the nature of the study and given the opportunity to participate or decline.

As mentioned within section 6.i of this chapter the researcher took steps to minimise the potential impact of their presence throughout the restorative process. This was attempted through the selection of relatively informal clothing similar to that worn by participants, the inconspicuous location of the researcher during the meetings and the extensive reassurance given to participants during the preparatory stages. The researcher endeavoured to ensure the victim participants was, as far as possible, relaxed and comfortable with their presence. The researcher attempted to avoid any feelings of discomfort, concern or anxiety being exacerbated by their presence and observation. This was continued throughout the post-intervention interviews where the researcher continually reminded the victim participant that they were free to end the interview and leave at any time, or take breaks for whatever reason

²⁹⁷Bryman, A. (2004). *Social Research Methods*.

²⁹⁸ <http://www.esrc.ac.uk/about-esrc/information/research-ethics.aspx>

during the interview itself. Again this was in an attempt to minimise the potential impact upon victim participants from engaging in this research.

Throughout the research all data collected and stored was done so in compliance with the requirements of the Data Protection Act. It was explained that whilst the findings of the research would be freely available, the anonymity of participants would be strictly maintained through the results being presented in a form that would not facilitate identification of the participants. Prior to their engagement, victim participants were provided with an information sheet detailing the purpose of the research and what their engagement would require. This was additionally explained orally by the researcher, providing opportunities for the clarification of any issues. Again, this was undertaken in the absence of the restorative facilitator, in an effort to remove any pressure which a victim participant may have felt to comply with the research due to any perceived involvement of the restorative practice's staff. Following this, consent forms were provided which again detailed the main elements of the research and recorded participants consent to participate. Throughout the project it was repeatedly made clear that the victim participant may withdraw at any time and that they were free to seek clarification of any element of the research.

8. Data Analysis

This section details the data analysis techniques utilised following the data collection. Specifically, as an inductive examination of victim expectations and experiences of restorative justice practices, a method of analysis which enabled theory to be generated from data was adopted. Specifically, a modified version of Grounded Theory was used, allowing for existing theories to inform those concepts arising from the empirical data. The reliance primarily upon qualitative data required coding to assist with analysis. Moving away from

Glaser and Straus' original Grounded Theory,²⁹⁹ a modified version developed by Strauss and Corbin was adopted,³⁰⁰ which accommodated the researcher's familiarity with relevant extant literature. The advantage of analysis based in Grounded Theory is its hypothetical ability to allow for unconstrained analysis of data, allowing themes to emerge solely from the data collected, free from influence of external or existing theories.³⁰¹ Those concepts derived by the researcher are grounded within the data analysed and therefore described as a more accurate reflection of the social phenomena studied. The following sections (i, ii, and iii) detail the progression from line coding, to open coding to axial coding which identified connections between the higher order concepts arising from the data. Data collection and analysis were undertaken simultaneously throughout the research project, thus allowing for the iterative approach of data collection (discussed previously), enabling the data collection instruments (specifically the interview schedule) to be adapted, to incorporate emergent themes arising from the on-going data analysis.³⁰²

i. Coding

This section details the approach taken when coding empirical data, commencing from line coding, to open coding and finally axial coding to determine the relationships between emergent themes. Data analysis progressed from an initial line by line coding approach. The analysis of data was conducted in tandem with additional data collection. Such analysis, (utilising line by line coding), provided a rigorous review of the data,³⁰³ delivering a basic

²⁹⁹Glaser, B. & Strauss, A. (1967). *The Discovery of Grounded Theory, Strategies for Qualitative Research*. Chicago: Aldine.; Strauss, A. & Corbin, J. (1990). *Basics of Qualitative Research*. London: Sage.; Bryman, A. (2008). *Social Research Methods*; Elliott, N., & Lazenbatt, A. (2005). How to recognise a 'quality' grounded theory research study. *Australian Journal of Advanced Nursing*, 22(3), 48-52.

³⁰⁰Strauss, A., & Corbin, J. (1990). *Basics of Qualitative Research: Grounded Theory Procedures and Techniques*. Newbury Park, Calif: Sage.; Strauss, A., & Corbin, J. (1998). *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory*. Thousand Oaks, Calif: Sage.

³⁰¹Elliott, N. & Lazenbatt, A. (2005). How to recognise a 'quality' grounded theory; Glaser, B. & Strauss, A. (1967). *The Discovery of Grounded Theory*. Chicago.: Aldine.

³⁰² Pope, C., Ziebland, S., & Mays, N. (2005). Analysing qualitative data. *BMJ*, 320, 114-116.; Lincoln, S. & Guba, E. (1985). *Naturalistic Inquiry*. London, UK: Sage.; Stake, R. (1995). *The art of case study research*. Thousand Oaks, Ca: Sage.

³⁰³ Ibid.

assessment of the attitudes and perceptions of each research participant. However, complete reliance upon written transcripts of interviews is again not without limitations, suffering from an inability to determine tone or intonation of the words spoken in addition to an absence of any data regarding the context in which such statements are made or the physical situation such as the participants demeanour, eye contact etc. (discussed previously). Such limitations may be rectified to some extent through the inclusion of data recorded in a research journal, such as participant attitude or demeanour. Following the initial line by line coding, a more selective coding framework was utilised as emerging codes and categories were identified. The construction of themes and theories initially focussed upon the regularity of particular attitudes, beliefs, emotions, expectations and events reported by participating victims, with particular reference to their initial expectations for the mediation process and their emotions and experiences post mediation. This initial line analysis employed limited quantitative-type analysis, including assessments of the numeric regularity of specific comments and the regularity of choice selection within the closed aspects of the questionnaires. Furthermore, an analysis of the more qualitative in-depth interviews conducted with individuals, drawing out their attitudes, belief and interpretations of the process will occur. Again, the selective method of coding utilised at this stage emphasises the need for researcher reflexivity so the potential influence of the researcher themselves can be identified.³⁰⁴ Once the data was categorised a second stage of analysis utilising open coding was conducted.

ii. Open Coding

Building upon the initial line coding, a stage of open coding was conducted, described within this section. When conducting the initial (open) coding, the process followed principles set out by Ryan and Bernard (2005) placing emphasis upon factors such as; the repetition of topics, the use of metaphors and analogies and the manner in which respondents

³⁰⁴ Strauss, A., & Corbin, J. (1998). *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory*. Thousand Oaks, California: Sage.

represent their thoughts, when attempting to determine the key concepts. Additionally, the similarities and differences between respondents are also cited of being of importance, as they allow responses to be placed within the context of others. Ryan and Bernard also place emphasis upon linguistic connections such as ‘because’ or ‘since’ as the use of such words denotes causal connection in the minds of the participants/respondents. This comprehensive review allowed for the establishment of codes from which themes ultimately emerge. The numerous codes can then be reduced to categories containing several similar concepts. For example the initial references to the presence of a police officer during the restorative justice process were categorised under the label of ‘Police Presence’. Similarly, the comments relating to the arrangement of the restorative meeting were categorised as ‘Arrangement’. From this reduction to the most important categories themes were then formulated, based upon the codes and categories previously established.

From analysing the raw data it became apparent that certain emergent themes could be grouped under more abstract ‘higher order concepts’ which possess greater potential to describe the phenomenon. Such higher order concepts included the allocation of the ‘Police Presence’ label under the concept of ‘Authority’ and the label of ‘Arrangement’ under the higher order concept of ‘Courtroom Imagery’. This reduced the number of units required to be worked with by the researcher, by grouping similar or closely related concepts/codes into larger, more general and descriptive categories. Once the codes and concepts were collated within the higher order groupings of categories axial coding was then conducted. The data was reassembled and connecting links and relationships between the previously determined categories were made. Axial coding brought coherence to the coded data, placing it in context and relation to other aspects contained within the data.³⁰⁵

³⁰⁵Charmaz, K. (2006). *Constructing Grounded Theory: A Practical Guide through Qualitative Analysis*: London: Sage.

iii. Axial Coding

This section further details the approach taken during data analysis, describing the process by which the central themes of this research were arrived. Progressing from the identification of emerging codes and categories axial coding was employed to establish subcategories and demonstrate possible links.³⁰⁶ Examples of this are the potential links between the higher order concepts of ‘Courtroom Imagery’ and ‘Responsibility’, with data within both categories appearing to rely upon comparisons with traditional court processes. Similar interactions were identified between the higher order concept of ‘Formality’ and ‘Authority’ and ‘Courtroom Imagery’, whilst remaining distinct theoretical concepts. Although an accepted framework for qualitative analysis, the necessary inferences and evaluation of the raw data required during axial coding again demands an acknowledgement of the researchers own input and influence. This method of analysis was continued, with new interviews undertaken until data saturation was reached.³⁰⁷ The decision to continue with the data collection until analytical saturation was achieved demonstrates a totality within the data set, providing a comprehensive answer to the research question, as no further themes or concepts will emerge from any additional data.³⁰⁸

9. Reflections on the Research Process

It should be noted that whilst the researcher’s presence throughout the preparatory interview and subsequent restorative panel enabled the identification of any confounding factors impacting upon the victim participant’s expectations and experiences, it may have affected the participants’ experience of the process. The presence of an observer during the preparatory interview and the subsequent restorative panel has the potential to alter the dynamic of the participants’ interactions. Recognised as the Hawthorne effect, the mere

³⁰⁶Ibid.

³⁰⁷Bryman, A. (2008).; Strauss, A. and Corbin, J. (1998).

³⁰⁸Ibid.

presence of an observer or the observation of social interaction holds the potential to alter the behaviour of those individuals.³⁰⁹ Whilst acknowledging the potential impact upon the data collected, the presence of the researcher and the observation of the participants was a necessity of this research to enable an accurate understanding of the context in which the data was generated. The researcher attempted to minimise this impact through dressing in appropriate clothing, similar to that of the facilitator and other members of the panel to ensure that victim participants remained at ease. Furthermore, the researcher sat away from the Panel, out of the eye line of each participant and their presence was explained at the outset of the preparatory interview and subsequent restorative Panel. It was intended that these precautions would minimise the impact of the researcher's presence and observation of participants. The researcher additionally attempted to reassure victim participants of their presence during the process through explaining their independent nature, the purpose of their presence and the ability of participants to request the removal of the researcher at any point during the process. Extensive time was invested by the researcher at the preparatory stage to fully explain the research, its aims and objectives and to emphasise participant anonymity and confidentiality to further reassure the victim participant and alleviate any concerns they may have held regarding their engagement with the research.

The researcher may have implicitly influenced the research through their personal academic background being grounded within jurisprudence. Such influences may have arisen from the researcher's own previous experiences, profession or background and may have impact upon formation of the research question, the design of the data collection instruments or the collection or subsequent analysis of the data. Whilst it has been suggested that the

³⁰⁹McCarney R., Warner J., Iliffe S., van Haselen R., Griffin M., & Fisher, P. (2007). The Hawthorne Effect: a randomised, controlled trial. *BMC Med Res Methodol* 7: 30.; Fox NS, Brennan JS, Chasen ST (December 2008). Clinical estimation of fetal weight and the Hawthorne effect. *Eur. J. Obstet. Gynecol. Reprod. Biol.* 141 (2): 111–4.; Henry A. Landsberger, *Hawthorne Revisited*, Ithaca, 1958.

removal of this researcher bias is not possible, its existence and subsequent impact should be identified and acknowledged.³¹⁰

The position occupied by the restorative justice practice in which this research was undertaken, operating as a diversionary mechanism within the criminal justice system presented additional considerations regarding the researcher's interaction with victim participants. Specifically, the likelihood of being perceived as being an agent of the criminal justice process was a significant risk. To address this perception and to minimise the potential for such a perspective to impact upon the data provided by victim participants significant time was devoted to explaining the independence of the researcher and the separate and independent nature of the research itself. This was intended to alleviate any concerns which victim participants possessed in addition to reducing the potential impact such perceptions would have upon the data collected.

10. Limitations

Despite the fulfilment of the research aim it is accepted that there are limitations in the findings of this research arising from the methodology adopted. Firstly limitations resulting from the relatively small sample size and sampling methods employed will reduce the ability of the results applicability to larger populations, however as stated this limitation is mitigated through the research's original objectives; the provision of detailed insight into the expectations and experiences of victims participating in restorative justice programmes. Such data and analysis will be of relevance only to victims participating in similar restorative justice practices. Due to the proliferation and variation in restorative practices detailed within

³¹⁰Greenlagh, T., & Taylor, R. (1997). How to read a paper; Papers that go beyond numbers (qualitative research). *British Medical Journal*.315, 740-743.; Hammersly, M., & Atkinson, P. (1995).*Ethnography: Principles in Practice*. London, UK: Sage.; O'Connell, J., & Layder, D. (1993). *Methods, Sex and Madness*. London, UK: Routledge.

the preceding chapter the data recorded within this study can only reliably be applied to restorative processes similar to that in which the research was conducted. This limitation is especially pertinent with the previous discussion of the commodification of restorative justice, resulting in the selection of differing aspects of the theory to pursue within individual practices. As such the data collected within this research may not be applicable to those restorative practices adopting similar, direct victim offender interaction guided by a trained facilitator, but only within those practices which have carried through those same aspects of the restorative justice culture which are present within the culture carriers of this research. However, the current deficiencies within extant work addressing this aspect of restorative justice theory and practice justify the approach to secure comprehensive data addressing victim experiences of a single restorative justice practice. Furthermore, the restorative practice in which this research occurred only involved victims of relatively minor offences, excluding all grievous bodily harm and sexual offences. Again, this renders the results inapplicable to victims of such offences, but again that was not the purpose of this research. Convenience sampling utilised through the selection of the individual restorative practice and subsequent participant selection further limits the applicability of the results to wider populations,³¹¹ however, the findings do appear transferable to similar situations, specifically to assessment of the nexus between victim expectations and experiences of restorative justice practices. The extent to which these methods deliver the objectives stated at the commencement of this research, specifically to examine the expectations and experiences of victims participating in a restorative justice practice in England, is demonstrated throughout this thesis, justifying their selection through the provision of quality empirical data upon which extensive analysis was successfully undertaken. It should be acknowledged that the

³¹¹Ritchie, J. & Lewis, J. (eds.) (2003). *Qualitative Research practice, a guide for social science students and researchers*. London: Sage.; Berg, B. (2009). *Qualitative Research Methods for the social sciences*. London: Pearson.; Pogrebin, M. (2003). *Qualitative Approaches to Criminal Justice, perspectives from the field*. London: Sage.

findings of this research may related to and be consistent with the model adopted and conveyed by the culture carriers operating within this specific restorative practice (as detailed within Chapter 1). The data collected may represent the impact of the commodification of the restorative paradigm as much as accurately reflecting victim participants own perceptions of the restorative paradigm. As such, the findings of this research are best understood in light of the particular commodified paradigm within which it operates.

11. Chapter Summary

This chapter detailed the methodology utilised in pursuit of the objectives of this study and the steps taken to ensure informed consent and fulfil ethical considerations. The research employed mixed method data collection when addressing the expectations, knowledge and experience of victims participating in restorative justice practices. Data was collected utilising questionnaires prior to, and interviews following victim participation in the restorative practice. The generated data was then analysed following adaptive grounded theory,³¹² utilising an interpretive theoretical approach. Qualitative data was coded utilising open and axial coding to facilitate the construction and identification of emergent themes.

The objectives of this research, to determine the relationship between victim expectations and experiences of restorative justice justify the reliance upon qualitative methods. The data generated through the implementation of the methods detailed above is presented throughout the chapters of this thesis, alongside discussion of additional literature. Initially, data relating to participants perceptions of the restorative justice programme prior to their involvement is examined, addressing their hopes, expectations and perceptions of the restorative justice process. This chapter relies primarily upon data collected through the pre-

³¹²Strauss, A. and Corbin, J. (1998).

process questionnaires, presented in chronological order commencing from the unprepared victim. Subsequently, the forth chapter introduces the empirical data collected during the qualitative interviews conducted following the conclusion of the participants restorative meeting. It explores the experience of the restorative process, identifying those elements which were valued by the participant, in addition to those which were received less favourably. Finally, the last data chapter explores the relationship between the participants' understandings of the restorative justice process identified within chapter III and their subsequent experiences, identified within chapter IV.

Chapter III

Great Expectations: Victim Perceptions and Knowledge of the Restorative Justice Process

1. Introduction

This chapter is based upon both qualitative and quantitative empirical data, with analysis undertaken in conjunction with relevant literature. It will establish the expectations and understanding possessed by victims participating in restorative justice practices prior to their participation. Section 2 presents data which demonstrates that prior to any preparatory meetings, victims are unaware of restorative justice, resulting in an inability to form accurate expectations of the practice in which they engage, thus necessitating participant preparation. The chapter then proceeds to discuss this preparatory stage of the restorative justice practice within section 3. The impact of the preparatory stage is then discussed with reference to traditionally low levels of victim attendance recorded within restorative schemes.³¹³ Data presented within section 4 clearly identifies the role of the gatekeepers,³¹⁴ specifically the facilitator, in the creation and management of victim expectations. Extant literature, not restricted to restorative justice processes, clearly demonstrates the importance of individual's expectations and the impact which their fulfilment has upon their subsequent experiences.³¹⁵ However, a detailed examination of the role of victim expectations and their

³¹³ Holdaway, S., Davidson, N., Dignan, J., et. al (2001) *New Strategies to Address Youth Offending: The National Evaluation of the Pilot Youth Offending Teams*. RDS Occasional Paper no. 69. London: Home Office.; Crawford, A. & Newburn, T. (2003). *Youth Offending and Restorative Justice: Implementing Reform in Youth Justice*. Cullompton: Willan.; Karp, D. & Walther, L. (2001). Community Reparative Boards in Vermont. In G. Bazemore & M. Schiff. (eds.), *Restorative Community Justice: Cultivating Common Ground for Victims, Communities, and Offenders*. Cincinnati, OH: Anderson.; Dutton, K. & Whyte, B. (2006). *Implementing Restorative justice within an integrated welfare system: the evaluation Glasgow's Restorative Justice System: summary report*: Criminal Justice social Work, Development Centre for Scotland.

³¹⁴ Adams, C. (2000). Suspect Data: Arresting Research. In R. King and E. Wincup (eds.), *Doing Research on Crime and Justice*. Oxford: Oxford University Press.; Ashworth, A. & Redman, M. (2005). *The Criminal Process*. Oxford: Oxford University Press.; Cavadino, M. & Dignan, J. (2006). *The Penal System*. London: Sage.

³¹⁵ Erez, E. & Rogers, L. (1999). Victim impact statements and sentencing outcomes and processes: the perspectives of legal professionals. *British Journal of Criminology*. 39, 216-239.; Erez, E. & Tontodonato, P. (1990). The effect of victim participation in sentencing and sentencing outcome. *Criminology*. 28, 451-474.; Erez,

impact upon experiences of restorative justice processes remains unexplored within extant literature.³¹⁶ Finally, the expectations possessed by victims are examined within Section 5, which suggests a divergence between expectations regarding the process (which remain positive) and expectations regarding the offender (which appear more negative). Data is presented and discussed in a chronological order, commencing with the initial position of the unaware victim prior to their referral to the restorative practice, moving through the process addressing their preparation and reliance upon gatekeepers when developing expectations of the restorative practice, concluding with an examination of expectations held by victims prior to their restorative meeting.

2. Victim Expectation Prior to Engagement with Restorative Justice

This thesis argues that victim expectations are an important factor in their experiences of the process. Erroneous or unfulfilled expectations hold the potential to impact negatively upon their satisfaction. It is suggested that for victims to form accurate expectations of the restorative process, they must possess an awareness of the philosophy and practice in which they engage. This chapter presents empirical data addressing victim perceptions of restorative justice prior to their participation. Although collected primarily at a pre-intervention stage, this is supplemented with data collected post-intervention via interviews, to improve understanding.

E., Roeger, L. & O'Connell, M. (1994). *Victim Impact Statements in South Australia: An Evaluation*. Adelaide, South Australian Attorney-General's Department.; Sanders, A, Hoyle, C., Morgan, R. & Cape, E. (2001). Victim impact statements: don't work, can't work", *Criminal Law Review*, 447-458.

³¹⁶Shapland, J., et al (2004). *Implementing restorative justice schemes (Crime Reduction Programme) a report of the first year*. London, Home Office.; Sawyer, B. (2000). *An evaluation of the SACRO (FIFE) young offender mediation project*. Edinburgh, Scottish Executive Central Research Unit.; Newburn, T. et al (2002). *The introduction of referral orders into the youth justice system: final report*. London, Home Office; Coates, R. & Gehm, J. (1989). An empirical assessment. In M. Wright & B. Galaway (ed.) *Mediation and Criminal Justice: victims, offenders and community* (pp. 251-263). London: Sage.

Participation in restorative justice is perceived as possessing significant benefits for all stakeholders.³¹⁷ These benefits are advocated as rectifying those well cited deficiencies which exist within traditional criminal justice processes. However, despite restorative justice receiving considerable attention from both scholars,³¹⁸ and criminal justice practitioners,³¹⁹ it remains an unknown quantity.³²⁰

Despite assertions advocating the benefits of restorative justice (detailed within chapter I), there is limited knowledge regarding victim expectations of restorative justice interventions. This section will demonstrate, via qualitative and quantitative data, that victims involved in this research were unaware of restorative justice theory and practice prior to their engagement, possessing a flawed comprehension of restorative justice. This flawed comprehension may result in the formation of erroneous expectations which, if unfulfilled may impact negatively upon victim experiences of the restorative process. This lack of comprehension is not assisted through its persistent latent ambiguity which remains unresolved in extant literature, in addition to insufficient specifications of the parameters and

³¹⁷ See, inter alia: Miers, D. et al (2001). *An exploratory evaluation of restorative justice schemes*, Crime Reduction Research Series Paper, Home Office pp 8.; Campbell, C. Devlin, R. O'Mahony, D. Doak, J. Jackson, J. Corrigan, T. & McEvoy, K. (2006). *Evaluation of the Northern Ireland Youth Conference service*. Northern Ireland Office: Research and Statistical Series Report No. 12; Braithwaite, J. (2003). Restorative Justice and a Better Future. In E. McLaughlin, Fergusson, R. Hughes, G. & Westmarland, L. *Restorative Justice; Critical Issues*. London: Sage Publications.; Johnstone, G. & Van Ness, D (2002). The Meaning of Restorative justice, In G. Johnstone, & D. Van Ness, *Handbook of Restorative Justice*. Cullompton: Willan.; Johnstone, G. (2002) *Restorative Justice; Ideas, Values, Debates*. Cullompton: Willan Publishing.

³¹⁸ Kim, H. & Gerber, J. (2010). Evaluating the process of a restorative justice conference: an examination of factors that lead to re-integrative shaming. *Asia pacific journal of police and criminal justice*, 8 (2), 1-19.

³¹⁹ Johnstone, G & Van Ness, D. (2007). *Handbook of Restorative Justice*.; Strang, H. & Braithwaite, J. (2002) *Restorative Justice and Family Violence*.; Crawford, A. & Newburn, T. (2003) *Youth Offending and Restorative Justice*.; Roche, D. (2006). Dimensions of Restorative Justice. *Journal of Social Issues*. 62 (2), 217; Johnstone, G. (ed.) (2003) *A Restorative Justice Reader*, Cullompton: Willan.

³²⁰ Meirs, D. et al (2001). *An Exploratory Evaluation of Restorative justice schemes*: Crime Reduction Research paper 9, London: Home Office, Policing and Reducing Crime Unit Research, Development and Statistics Directorate.; Hoyle, C. Young, R. & Hill, R. (2002) *Proceed with caution: An Evaluation of the Thames Valley Police Initiative in Restorative Cautioning*, York: Joseph Rowntree Foundation.; Miers, D. (2004) Situating and Researching Restorative Justice in Great Britain. *Punishment and society*. 6 (1), 23-46.

limits of the concept.³²¹ Significantly, such literature suffers from the uncritical assumption that restorative justice offers processes of intrinsic value and benefit.³²²

i. Victim awareness of restorative justice practice

Qualitative and quantitative empirical research with victims demonstrated a clear lack of awareness among victims regarding restorative justice theory and practice. This finding was similar to that of other empirical studies, albeit limited in number, which assess victim expectations prior to their engagement.³²³ As stated within the preceding chapter, this study examined the expectations held by victims prior to their engagement in the restorative justice process. Empirical data, collected prior to the restorative intervention, appears to support the assertion that despite its increased use, victims remain unaware of restorative justice, both as a theory and practice.

Questionnaire responses, collected prior to the restorative intervention,³²⁴ illustrated a general lack of awareness of restorative justice amongst participating victims. When initially questioned regarding their awareness of restorative justice prior to their participation, 75% of all victims, (73% at location A and 78% at location B) responded stating that they were unaware of restorative justice prior to their referral to the service.

³²¹von Hirsch, A., Ashworth, A., & Shearing, C., (2005) Specifying Aims and Limits for Restorative Justice: A "Making Amends" Model?. In A. von Hirsch et al. (eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (pp. 21–41). Oxford: Oxford University Press.; Bazemore, G., & Green, D. (2007). "Yardsticks" for Victim Sensitive Process: Principle-Based Standards for Gauging the Integrity of Restorative Justice Process. *Victims and Offenders*. 2(3), 289-301. Vetterburg, N., Bradt, L. and Roose, R.; (2007). Relevant Others in Restorative Practices for Minors: For What Purposes? *Australian and New Zealand Journal of Criminology*. 40(3), 291-312.

³²²Smith, M. (2001). What future for 'public safety and restorative justice in a system of community penalties?'. In A. Bottoms, L. Gelsthorpe & S. Rex (eds.) *Community penalties; change and challenges* (pp. 200-225). Cullompton: Willan.; Miers, D. (2004). Situating and Researching Restorative Justice in Great Britain. *Punishment and society*, 6 (1), 23-46.

³²³Wemmers, J. & Canuto, M. (2002). *Victims' experiences with, expectations and perceptions of restorative justice: A critical review of the literature*. Montreal: Department of Justice Canada.; C Hoyle, (2009). Restorative Justice Policing in Thames Valley, *Journal of Police Studies*. 2(11), 189 (Special Issue on Restorative Policing edited by L. G. Moor, T. Peters, P. Ponsaers and J. Shapland (eds.); Hill, R. (2002). Restorative justice and the absent victim: new data from the Thames Valley. *International Review of Victimology*. 9, 276-288.

³²⁴Detailed within Chapter II, Section 6, i.

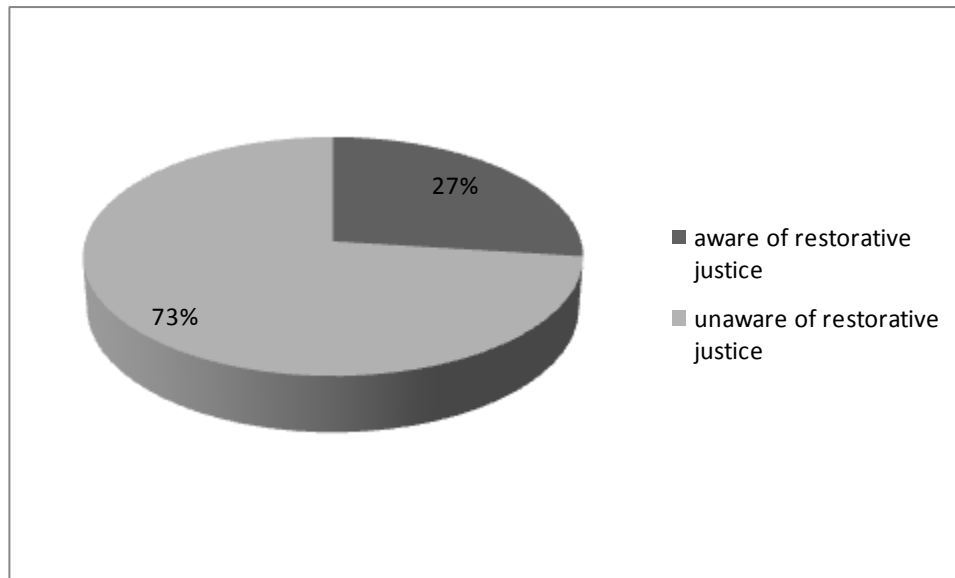


Figure 3.1 Victim awareness of restorative justice prior to their referral; location A

Such low awareness within location A is of particular note due to the longevity of the scheme, having operated since 2005, and its relatively high media presence within a relatively small geographical area, due efforts of the scheme to maintain media attention. Similar results were present within the data collected location B. This suggests that this limited level of awareness among victim participants is present across different geographical areas and not constrained to the individual geographical and social-demographic circumstances of location A.

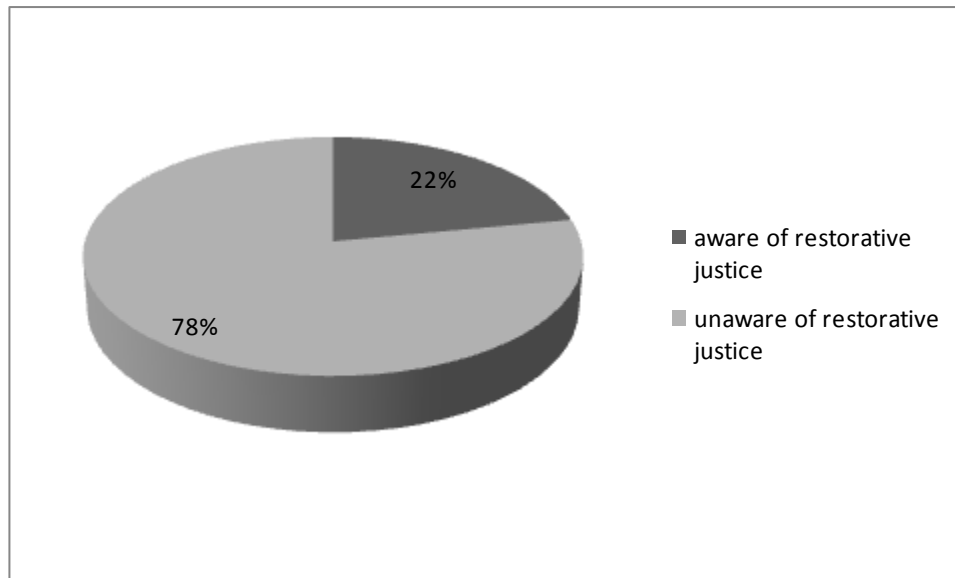


Figure 3.2 Victim awareness of restorative justice prior to their referral; location B

This apparent lack of awareness potentially offers an explanation into the paradox of persistently low levels of engagement in practices designed to benefit victims.³²⁵ This apparent lack of knowledge possessed by victims may influence their decisions to engage with the process; its unknown nature may discourage participation. The necessity of educating and informing victims regarding restorative justice may provide one motive behind the preparatory meetings conducted by restorative justice practices. Such meetings may seek to increase victim awareness of the restorative justice process. Undertaken prior to acquiring complete consent for victim engagement, these preparation meetings may additionally be implemented to secure participation. Such use provide one explanation into the notably higher levels of victim participation within location A and B, compared to previous research studies.³²⁶ This lack of awareness is related to a significant lack of knowledge, which restricts the ability of victims to develop accurate expectations of the restorative practice. The following section examines data related to victim understanding of restorative justice, leading to an examination of victim expectations.

³²⁵ See Chapter 1, Footnote 154.

³²⁶ See Chapter I, Section 4, v.

It is contended within this thesis that victim comprehension of restorative theory and practice is crucial if they are to form realistic and accurate expectations. Without a full understanding of the philosophy or objectives of the process erroneous expectations may arise, which can impact negatively upon victim experiences of the restorative practice. In addition to confusion regarding the basic principles of restorative justice, empirical data gathered during this research suggests still further misconceptions exist regarding the implementation and delivery of restorative justice programmes. As noted previously, the latent ambiguity of the concept of restorative justice results in a myriad of practices operating under the ‘restorative justice umbrella’,³²⁷ further compounding victims inability to hold accurate understandings and subsequently expectations.

Whilst academic debate abounds regarding what practices exist as ‘truly restorative’,³²⁸ data from this study suggests that victims remain confused regarding their role and obligations during the restorative meeting itself. Within this study a notable proportion of questionnaire responses (56% or 54 of 97 respondents) indicated that despite their preparatory interviews, victims remained unsure of restorative justice theory and practice. This is illustrated in figure 3.3, below:

³²⁷Zedner, L. (2004). *Criminal Justice*. Oxford: Oxford University Press.

³²⁸Umbreit, M. (1994). Victim sensitive communication with offenders: A restorative justice continuum Victim Offender Mediation. *The journal of the International Association for Victim Offender Mediation*. 5(3), 7-8.; Lilles, H. (2001). Circle sentencing: Part of the restorative justice continuum. In A. Morris & G. Maxwell, (eds.), *Restorative justice for juveniles: Conferencing, mediation and circles* (pp. 161-179). Oxford: Hart Publishing.

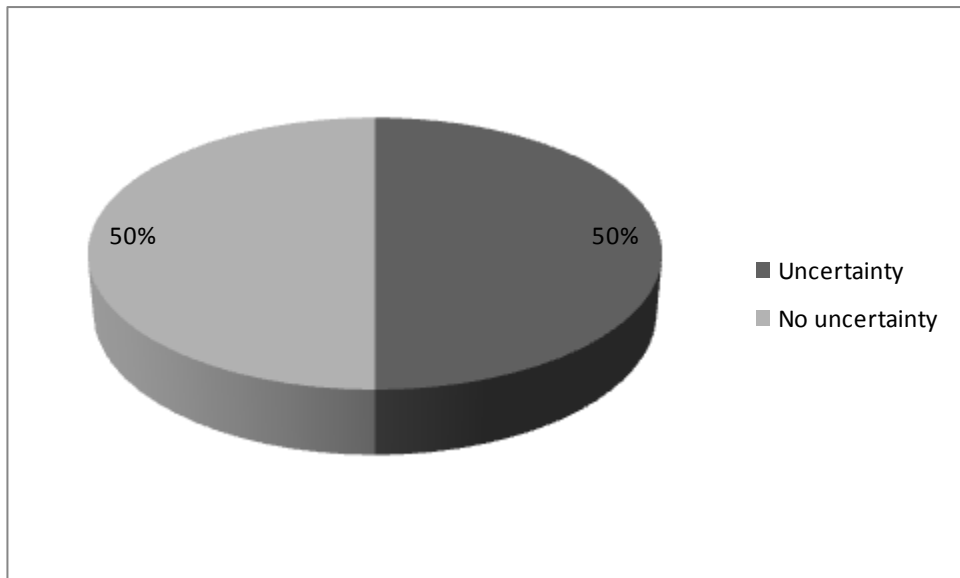


Figure 3.3 Victim uncertainty over restorative justice following the preparatory interview – location A

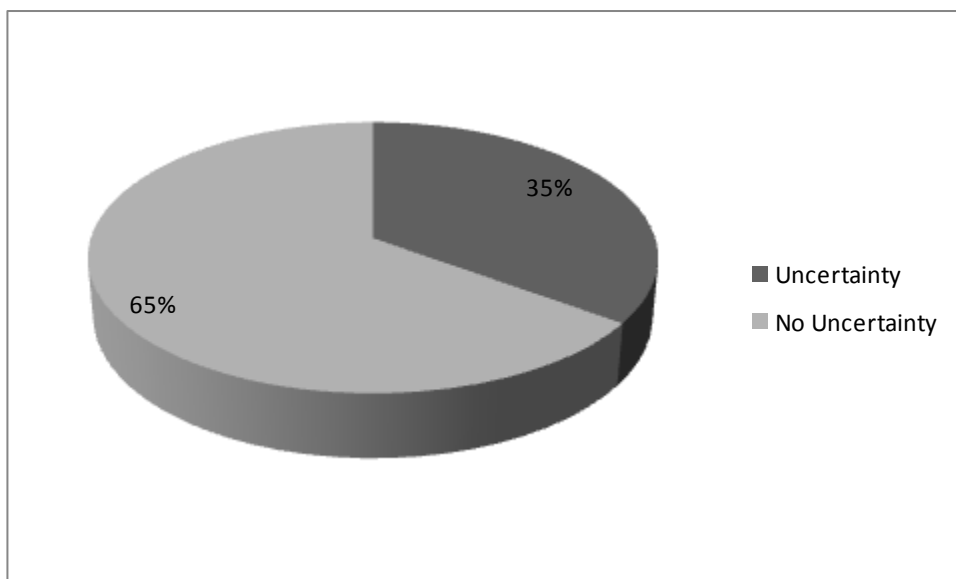


Figure 3.4 Victim uncertainty over restorative justice following the preparatory interview – location B

This lack of knowledge among victims regarding restorative justice is also reflected within extant literature, which demonstrates a lack of understanding regarding victims' roles in restorative practices.³²⁹ Previous studies indicate that significant proportions of participants attended restorative meetings not knowing what to expect.³³⁰ Empirical data collected during this study evidence victim requests for further explanation of the restorative process. This limited comprehension of restorative justice amongst victims was illustrated in the qualitative data provided through victim responses to the open questions within the pre-intervention questionnaires at location A:

“The steps involved in the panel itself, what I can ask them [offender] to do”
[Questionnaire-A008]

“The actual process of the panel, what I will have to do and how they will act”
[Questionnaire-A015].

Similar responses were present within questionnaires completed within location B. When asked to identify any specific areas of uncertainty regarding the process victim responses included:

“What kind of things can I ask for? How it will be enforced?” [Questionnaire-B004]

“What I will have to do, what they have to do” [Questionnaire-B021]

“If it [the restorative meeting] is done by the police or not, and what role they have”
[Questionnaire-B034]

“What I am actually there for ... like why do I need to be there, what will I need to do...” [Questionnaire-B011].

It is apparent from these accounts that such concerns not only directly refer to specific practice issues, but also evidence a more general lack of understanding surrounding the

³²⁹Shapland, J. et al. (2007). *Restorative justice: the views of victims and offenders, The third report from the evaluation of three schemes*. Miers, D. et al (2001). *An Exploratory Evaluation of Restorative Justice Schemes*. London, Home Office.; Hoyle, C., Young, R. & Hill, R. (2002). *Proceed with caution: an evaluation of the Thames Valley Police Initiative in restorative cautioning*. York: York Publishing Services Ltd.

³³⁰ *ibid.*

restorative philosophy, demonstrated through their comments addressing the outcome of the process. A large minority of questionnaire responses (44% or 46 of 97) appear to demonstrate confusion regarding the roles of each participant. This theme is clearly apparent in the following narrative responses:

“I wasn’t sure what I would have to do during this panel what I could say or ask for.” [Questionnaire-A022]

“I wanted to know more about my role, when I could talk, what I could ask of the offender....” [Questionnaire-A026]

“...just what I was supposed to do really, I didn’t quite understand before I got there...” [Questionnaire-B005]

“I was very nervous as I didn’t know what I was going to do...should I have prepared a list of questions or answers, what I needed to do, say or ask....” [Questionnaire-B013].

Such uncertainty regarding the processes involved in restorative justice interventions, and the tasks required of participants, would appear to support assertions that, whilst being able to identify deficiencies within the traditional criminal justice system, victims remain unaware of the concept of restorative justice and its associated benefits. As previously suggested,³³¹ this represents one potential explanation into the low levels of engagement previously recorded within past studies. Furthermore, unfulfilled erroneous expectations may impact negatively upon victim experiences, detailed later within this thesis.

This thesis argues that the diverse implementation of restorative justice precludes any inference that restorative practices can intrinsically deliver specific benefits. The advantages of fully restorative practices, such as increased interaction with the offender demonstrating visible remorse assisting in victim closure are not as readily available within less restorative practices such as shuttle mediation.

³³¹ See Chapter I, Section 4, v.

Restorative justice programmes have recorded a wide range of victim participation levels; victim engagement traditionally ranges between 40 - 60%.³³² As stated previously, this may be seen as surprisingly low for a process repeatedly described as offering significant benefits. This thesis argues that victim awareness and comprehension of restorative justice is necessary for the formation of accurate expectations of the process in which they engage. The significant confusion and debate regarding both the philosophical foundation and intended objectives of restorative justice, discussed within chapter one, may hinder the ability of victims to form accurate expectations, resulting in erroneous, unfulfilled expectations which impact negatively upon their experiences. Such confusion may potentially impact upon victim experiences of the restorative justice practice and the extent to which they engage with the process and realise the potential benefits offered by restorative practices.

ii. 'Rejection' of restorative justice and focus on punitive sanctions

Despite claims within extant literature advocating the values of restorative practices,³³³ victim participants within this research appear to reject those aspects of restorative justice valued by practitioners and theorists as beneficial to victims. In the empirical work undertaken during this research, such rejection was illustrated through a consistent focus upon punishment and punitive sanctions amongst victims. Arguably, it can also be evidenced by expectations of greater formality and the presence of a police officer within the restorative meeting.³³⁴

³³²Dutton, K., & Whyte, B. (2006). *Implementing Restorative justice within an integrated welfare system: the evaluation Glasgow's Restorative Justice System: summary report*: Crim Justice social Work, Development Centre for Scotland.; Dignan, J. (1992). Repairing the Damage: Can Reparation Work in the Service of Diversion?. *British Journal of Criminology*. 32(4), 463-472.; Maxwell, G. & Morris, A. (1993). *Family, Victims and Culture: Youth Justice in New Zealand*. Wellington: Social Policy Agency and Institute of Criminology, Victoria University of Wellington, New Zealand.; Hoyle, C. (2002). Securing Restorative Justice for the 'Non-Participating' Victim. In C. Hoyle & R. Young (eds.), *New Visions of Crime Victims*. Oxford: Hart Publishing

³³³Identified within Chapter I, Section 4.

³³⁴Discussed further within Chapter IV, Section 2, i.

Confusion was apparent in victim emphases upon traditional concepts of restitution and punishment as justice, contained within pre-intervention questionnaires. Responses commonly focussed upon retributive and punitive concepts, reflected in statements including:

“An appropriate punishment so they won’t do something like this again”

[Questionnaire-A042]

“...something to stop it happening, some sort of punishment” [Questionnaire-A044]

The apparent desire for features which are prima facie inconsistent with restorative justice principles suggests that, once aware of restorative justice, many victims fail to comprehend its central philosophy or reject its central premise.

Rejection of restorative principles is demonstrated through victim responses establishing what is necessary for the process to adequately respond to the offence within the pre-intervention questionnaire. Victim responses identified the formality of the process as an important aspect for its appropriateness:

“...it’s serious enough so they change their behaviour and don’t do it again...”

[Questionnaire-A041]

“...to be formal so it will impress upon him that his actions are unacceptable and explain why and what possible consequences await him if he does not change - i.e. prison” [Questionnaire-A014]

“...for offender to own up and take responsibility and the process to be serious enough to change their behaviour” [Questionnaire-A040].

Furthermore, the existence of restorative justice practices as truly voluntary and discursive processes in which the stakeholders determine among themselves a consensual method of resolution,³³⁵ may be questioned in the light of some of the questionnaire responses gathered

³³⁵ Latimer, J. (2005). *The Effectiveness of Restorative Justice Practices: A meta-analysis.*; Zehr, H. & Mika, H. (1998). Fundamental Concepts of Restorative Justice. *Contemporary Justice Review*. 1, 47-55. Reprinted in

in this research. Responses included elements of coercive compulsion towards the offender, demonstrated within responses:

“I can *make* the offender explain their actions” [Questionnaire-A024]

“The panel will *force* them realise what they did was wrong and make them change their behaviour” [Questionnaire-A004]

“I can *force* them to repair the damage they have done” [Questionnaire-A017].

It appears therefore that principles of traditional retributive justice, sanction and coercion appear to persist within victims’ somewhat flawed interpretations and understandings of restorative justice prior to their engagement in the process.³³⁶ Within pre-intervention questionnaires, the theme of punishment persisted through statements of ‘justice’ and ‘deserts’, when addressing victim perceptions of the essential features of the restorative process.

When probed further, during semi-structured interviews following their restorative-intervention, victims repeatedly attempted to explain their references to ‘justice’ through offender coercion or deterrence. Such desires are clearly present within responses such as;

“I wanted some punishment ... something so that they wouldn’t do it again...”
[Questionnaire-A011]

“I wanted them to have to do something difficult... something that’s hard work so that they show they really were sorry it happened...” [Questionnaire-B009]

Restorative Justice. Declan Roche (2003), ed. Pp. 73-81. The International Library of Essays in Law & Legal Theory, Second Series. Aldershot, Hants, England: Dartmouth/Ashgate.; Braithwaite, J., (2001) *Restorative Justice and Responsive Regulation*.

³³⁶Demonstrated throughout the empirical data of this research, discussed later within the chapter.

“Anyone can just say sorry...it’s just words but I want them to have to do something, like manual work or cleaning so that they won’t do this a again.” [Questionnaire-B012].

It would appear that a pure verbal expression of remorse would have been insufficient to satisfy the desires of these victims.³³⁷ A common theme which emerged from the data was that, whilst the majority of victims expressed a desire for the offender to avoid a ‘full’ criminal record for their actions (perceived as an unjustified reaction), they nevertheless desired some form of sanction. A number of victim respondents provided responses which appear to support theoretical claims of restorative justice, such as repairing the harm caused rather than judging the offender or offence. Arguably, this dichotomy of views demonstrates confusion amongst victim participants regarding the nature of restorative principles, with different victims pursuing different, sometimes conflicting objectives. The following quotations illustrate this:

“I think they needed to learn a lesson so some sort of punishment is needed”

[Questionnaire-A032]

“...to see them (offender) punished” [Questionnaire-B021]

Such attitudes clearly contrast with the following comments:

“I wanted to help them (offender) understand the consequences and try to repair the damage...” [Questionnaire-A031]

“...the chance to help the boy get away from this type of behaviour” [Questionnaire-A022]

“...to resolve the issue, so that it doesn’t carry on being a problem in the future...”

[Questionnaire-B008].

³³⁷Walklate, S. (1986). Reparation, a Merseyside view. *British journal of criminology*. 27 (7), 287-298.

Further misconceptions within victim comprehension of restorative justice are illustrated through victim responses describing punitive elements as being of central importance to the outcome of the process:

“...to punish the offender for what they did” [Questionnaire-A028],

“...not letting them get away with that behaviour” [Questionnaire-B014],

“I just wanted to make sure they got some kind of punishment really...”

[Interview-A022]

“...the opportunity to have my garden repaired after what they had done”

[Questionnaire-B002].

Such statements clearly demonstrate the extent to which some victims focused upon restorative justice as a method of traditional punitive sanction. Such a wide range of perceptions regarding the most important aspect of the process suggests that victims do not possess a clear, uniform understanding of restorative justice philosophy and its aims or objectives. This allows for the creation of such varied expectations unlikely to be fulfilled by the process in which victims participate.

In view of victims’ apparent reticence to engage in restorative justice,³³⁸ illustrated in extant literature, increased understanding of restorative practice has been identified as a means of increasing victim engagement.³³⁹ Studies which have recorded low levels of victim engagement identify the inadequate preparation received by victims as being a primary reason for such low participation.³⁴⁰ Furthermore, where victims do participate, but receive inadequate preparation such victims may fail to avail themselves of the potential benefits of

³³⁸ Hill, R. (2002). Restorative justice and the absent victim: new data from the Thames Valley. *International Review of Victimology*, 9, 276-288; Chapter I, footnote 154.

³³⁹ Miers, D. et al (2001). *An Exploratory Evaluation of Restorative Justice Schemes*. London, Home Office.; Hoyle, C., Young, R. & Hill, R. (2002). *Proceed with caution: an evaluation of the Thames Valley Police Initiative in restorative cautioning*. York: York Publishing Services Ltd.; Umbreit, M. (1994). *Victim Meets Offender: The Impact of Restorative Justice and Mediation*. Monsey, New York: Criminal Justice Press

³⁴⁰ Chapter I, footnote 154.

the restorative justice process due to these persistent misconceptions and limited understanding.

In light of the importance of preparation demonstrated above, the following section examines the extent to which preparatory meetings undertaken by the practice upon which this research focuses was successful in rectifying those misconceptions. It explores the purpose of the preparatory meetings (undertaken with all participants), establishing the extent to which it succeeds in educating participants, securing participation and managing expectations.

3. Preparation: education, securing engagement and managing expectations

Whilst it may be anticipated that victims would possess limited knowledge of new criminal initiatives, such as restorative justice, and that their understanding of the process may be somewhat flawed, it would be expected that such deficiencies could be rectified through adequate preparation. However, the findings of this research suggest that victims remain unsure of both restorative theory and practice, despite an extensive preparatory stage. The persistence of misconceptions following victim preparation and participation questions the extent to which they are capable of engaging in the restorative process, and the extent to which they can fulfil their deliberative role. With restorative justice described as an ‘interactionary’ process, reliant upon participant engagement, the extent to which victims can truly engage with a process they do not understand is questionable.³⁴¹ The extent to which this confusion over restorative justice theory persists among victims despite completion of the process also questions the success of those preparatory meetings undertaken with victims in educating victims regarding the philosophy, aims and objectives of restorative justice.

³⁴¹Umbreit, M. (1998). Restorative Justice Through Victim-Offender Mediation: A Multi-Site Assessment. *Western Criminology Review*, 1(1).; Roach, D. (2002). Restorative Justice and the Regulatory State in South African Townships. *The British Journal of Criminology*.42, 514-533.; Ashworth, A. (1993). Some doubts about restorative justice. *Criminal Law Forum*.4(2).

Within both locations, the restorative justice schemes conducted preparatory meetings with victims. Such processes were undertaken under the auspices of educating participants regarding restorative justice philosophy, its objectives and to prepare them for what they may experience during the process. This meeting allows the facilitator to explain the aims and objectives of the restorative process, what the process entails and allows victims to ask questions. The preparatory interview appears to possess multiple objectives which include securing victim participation; educating participants, and describing the role of each participant. It would appear that the preparatory interview additionally serves as an opportunity for expectation management (or creation, as discussed later). Similar preparation is undertaken within numerous restorative practices.³⁴² Past research repeatedly identifies the importance of adequate preparation of victims prior to their restorative justice process.³⁴³ Data presented above, focussing upon retributive expectations of the restorative process, suggests that victims continue to possess misconceptions over restorative justice philosophy and practice despite preparatory meetings. This is supported within extant studies where victims are recorded as arriving at their restorative meeting not knowing what to expect.³⁴⁴ This is also reflected through victim comments:

“I didn’t know what to expect once I got there...I just did what I was told”

[Interview-B008].

“When I arrived I wasn’t sure what would happen...but it was OK once we started”

[Interview-A017].

This suggests the extent to which preparatory meetings within this case study fulfil their objectives of education and preparation remains unsuccessful. The following section

³⁴²Umbreit, M. (1998). Restorative Justice Through Victim-Offender Mediation: A Multi-Site Assessment, *Western Criminology Review*. 1(1).[Online]. Available: <http://wcr.sonoma.edu/v1n1/umbreit.html>.; Crawford, A., & Newburn, T. (2003). *Youth Offending and Restorative Justice: Implementing Reform in Youth Justice*. Cullompton: Willan.; Sherman, L. & Strang, H. (2007). *Restorative Justice the Evidence*.

³⁴³Tyler, T. (1988). What is procedural Justice?: Criteria Used by Citizens to Assess the fairness of Legal Procedures. *Law and Society Review*. 22 (1), 103-135.

³⁴⁴Umbreit, M. (1998). *Restorative Justice Through Victim-Offender Mediation*.; Roach, D. (2002). *Restorative Justice and the Regulatory State*.

examines the preparatory meetings ability to educate participants regarding the restorative practice in which they engage. Such education is of crucial importance as without education, victims would remain confused regarding restorative justice, being incapable of forming accurate expectations of the process.

i. Preparation and the auspices of education

Past studies addressing ‘victim satisfaction’ with restorative interventions have been conducted after victims have participated in the process.³⁴⁵ Notwithstanding the value of such studies, they offer limited assessments of victim expectations and their understanding of the benefits associated with participation, potentially explaining the low levels of participation previously recorded.³⁴⁶ Few studies have directly addressed the extent of knowledge held by victims regarding restorative justice prior to their involvement.³⁴⁷ It is suggested that such expectations are important due to their impact upon victim experiences. However, in light of the conceptual difficulties associated with restorative justice at an academic level,³⁴⁸ it appears unlikely that victims will possess the extended understanding of the process required for both identifying its advantages over the traditional criminal justice process.³⁴⁹

³⁴⁵ Daly, K. et al (1998). *South Australia Juvenile Justice (SAJJ) Research on Conferencing, Technical Report No 1*. Project Overview and Research Instruments. Queensland, School of Criminology and Criminal Justice, Griffith University.; Strang, H (2002). *Repair or Revenge: victims and restorative justice*. Oxford, Clarendon Press; Umbreit, M. (1993). Juvenile offenders meet their victims: the impacts of mediation in Albuquerque, New Mexico. *Family and Conciliation Court Review*. 31 (1), 90-100.; Umbreit, M. & Coates, R. (1993). Cross-site analysis of victim-offender mediation in four states. *Crime and Delinquency*. 39 (4), 565-585.

³⁴⁶ See Chapter I, footnote 154.

³⁴⁷ Strang, H. (2002). *Repair or Revenge*. Oxford: Oxford University Press.

³⁴⁸ Bazemore, G. and Walgrave, L. (1999). Restorative juvenile justice: In search of fundamentals and an outline for systemic reform. In G. Bazemore & L. Walgrave (eds.), *Restorative juvenile justice: Repairing the harm of youth crime* (pp. 45-74). Monsey, NY: Criminal Justice Press.; Roche, D. (2001). The Evolving Definition of Restorative Justice. *Contemporary Justice Review*. 4 (3,4), 341-353.

³⁴⁹ Hoyle, C. (2002). Securing Restorative Justice for the ‘Non Participating’ Victim.; Scheff, T. (1998). *Community Conferences: Shame and Anger in Therapeutic Jurisprudence*. *Revista Juridica Universidad de Puerto Rico* 67: 97. Walgrave, L. (2000). Extending the Victim Perspective Towards a Systemic Restorative Justice Alternative. In A. Crawford & J. Goodey (eds.), *Integrating a Victim Perspective within Criminal Justice* (pp. 253-284). Dartmouth, Ashgate.; Braithwaite, J. (1996). *Restorative Justice and a Better Future*. Dorothy J. Killam Memorial Lecture. Dalhousie University, October 17.; Bazemore, G., & Griffiths, C. (2003). Conferences, circles, boards, and mediations: the “new wave” of community justice decision making. In E. McLaughlin, R. Fergusson, G. Hughes, & L. Westmarland, (eds.), *Restorative justice: Critical issues* (pp. 76-93). London: Sage Publications Ltd.

Establishing victim understanding and the accuracy of their expectations may offer explanations into the unexplained low levels of participation in restorative justice practices.³⁵⁰

Limited understanding of restorative justice is illustrated through victims' inability to identify the benefits of restorative justice, demonstrated through the questionnaire data. During coding, 'uncertainty' was identified from comments including:

"...Not sure what will happen and the true aim or purpose of the meeting"

[Questionnaire-B024]

"I'm not comfortable with what I can ask them to do ... like what is actually allowed"

[Questionnaire-B022]

"...the actual process of the panel, what I will have to do and how they (offender) will act and participate" [Questionnaire-A009]

"...the actual process and what possible results are available" [Questionnaire-A018].

Such a limited understanding of the theory and practice of restorative justice is unlikely to be resolved whilst confusion persists within both academic and practitioner groups regarding what practices the restorative justice umbrella can encompass.³⁵¹ Despite the majority (96%) of victims stating that restorative justice was appropriate for the offence,³⁵² a notable proportion remained confused or unsure of restorative justice, reflected within Figures 3.3, 3.4 and 3.5 and the above quotations. It is submitted that, whilst agreeing to engage in the restorative process, victims relied upon gatekeeper assertions that restorative justice presents an appropriate response to the offence to make this decision,³⁵³ as their knowledge of restorative justice remained limited.

³⁵⁰ Chapter I, footnote 154.

³⁵¹ Newburn, T (2007). *Criminology*, Cullompton: Willan Publishing.

³⁵² See Figures 3 and 4

³⁵³ Discussed further within post-intervention interviews and explored later within this Chapter.

Following the preparatory meetings, victims participating in this study were invited to score their understandings of restorative justice upon a Likert type scale, with point 1 representing no understanding and point 5 representing a complete understanding. Victim responses are demonstrated within Figure 3.5, below. Whilst a large number indicated that they felt they possessed a ‘complete’ (point 5) or ‘good’ (point 4) understanding within location A (27 of 60 participants) a majority indicated that their understanding fell between point 1; ‘no understanding’ and point 3; ‘some understanding’ (a total of 33 of 60, or 55%). Similar results were collected within location B (15 of 37 indicated a good or complete understanding, whilst 21 indicated ‘no understanding’ and ‘limited understanding’). This supports previous research identifying a lack of awareness within victim participants in restorative practices. Only 8% ³⁵⁴ of respondents felt that they ‘fully understood’ the process, with the largest proportion of respondents indicating a ‘mid-range’ understanding of restorative justice (detailed within figure 3.5 below). Without an understanding of restorative justice, the abilities of victims to form accurate expectations of the process remain limited.

³⁵⁴ 5 of 60 respondents within Case study A and 3 of 36 respondents in Case study B

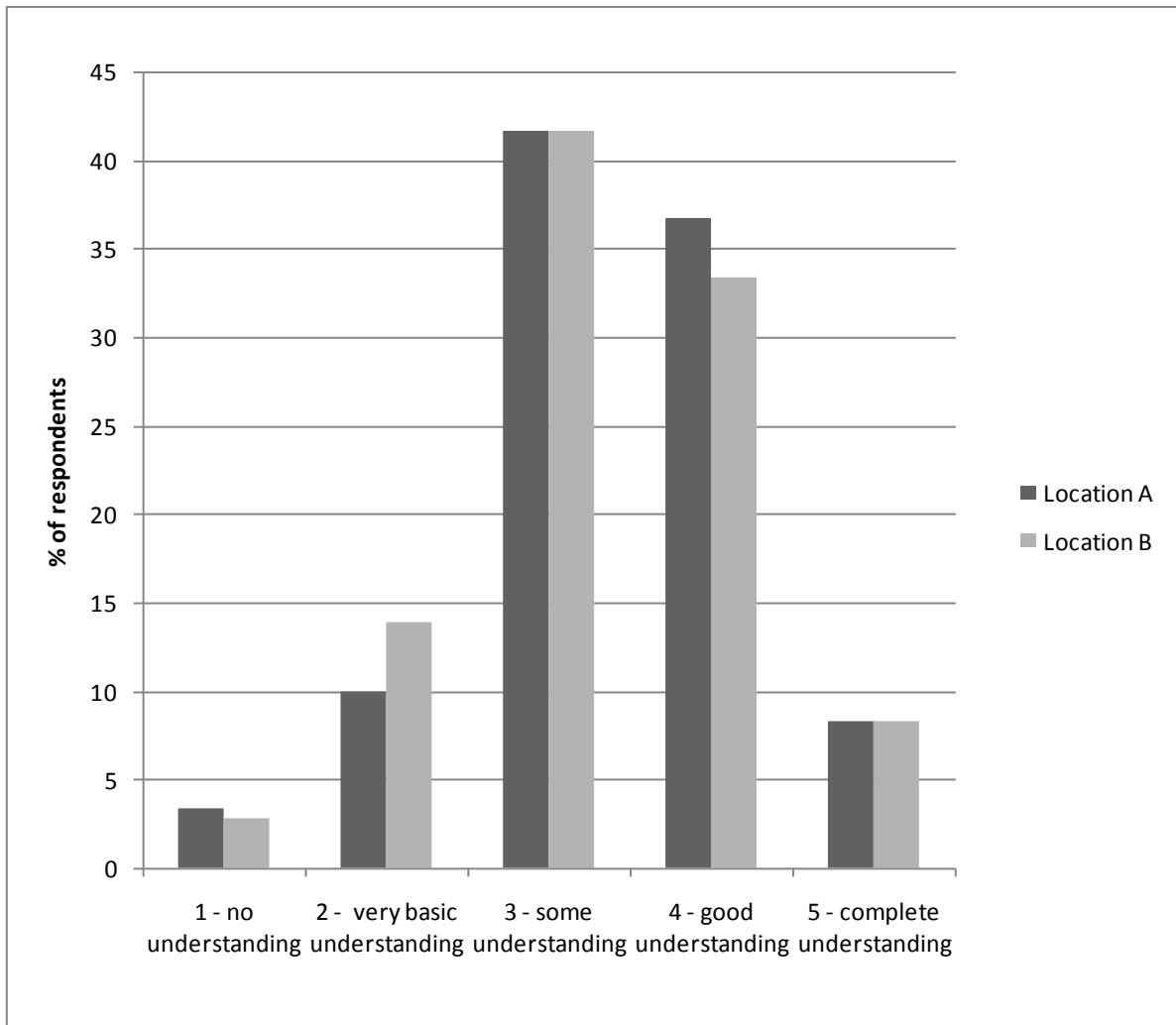


Figure 3.5 Victim understandings (self-assessed) of restorative justice following preparatory stage – location A and B

Furthermore, the theme of uncertainty and limited comprehension of restorative justice was apparent within post-intervention interviews:

“...I’ve got a limited understanding of ... this justice committee ...”

[Interview-A010]

“...when I was told that it would be taken to a C.J.P. I thought what the hell is a C.J.P. ... I was briefly told ... I understood that but I wanted to know more about it ... I still do” [Interview-A007]

“...beforehand I honestly didn’t know what to expect...I know a bit more now, but not a lot” [Interview-A014].

Furthermore interview data demonstrated that victims held specific concerns regarding the process, such as;

“...when they asked how long I thought the probationary period should be, yeah I was quite surprised I was involved with that I thought that would be more the [facilitator] maybe or the Panel.” [Interview-A006].

Confusion among victim participants regarding central features of restorative justice theory was further illustrated in the narrative responses gathered in the pre-intervention questionnaires. A large minority of victims (34% or 33 of 97 respondents across both locations) asserted the importance of ‘delivering punishment’; a sharp contrast to the accepted ideals of restorative justice espoused within extant literature, appearing to undermine the educational purpose of the preparatory stage. Such references included:

“...to punish the offender” [Questionnaire-A012]

“...an appropriate punishment to prevent further offences” [Questionnaire-A037]

As noted above, such statements are clearly inconsistent with the commonly cited central features of restorative justice philosophy,³⁵⁵ Nevertheless, such focus persisted within responses surrounding: ‘expectations’ of restorative interventions and responses to what constituted a successful intervention:-

“...an appropriate punishment for the offender” [Questionnaire-A0004]

“...for there to be some appropriate sanction” [Questionnaire-A0013]

“...a deserving punishment for what they [offender] has done” [Questionnaire-A0021]

and

“...for some punishment to teach them [offender] a lesson”. [Questionnaire-A0029]

³⁵⁵ Mika, H. & Zehr, H. (2003). A Restorative Framework for Community Justice Practice. In K. McEvoy & T. Newburn (eds.), *Criminology, Conflict Resolution and Restorative Justice* (pp. 135-152). Basingstoke, Hampshire, UK and New York, NY: Palgrave MacMillan.

Such assertions clearly indicate the perceived importance of punitive sanction, a desire more often satisfied by traditional criminal justice process.³⁵⁶ If victims perceive punitive aspects as important and necessary aspects of the practice, it is suggested that they do not fully embrace restorative justice, a process often depicted as being dichotomous to the punitive sanctions of the traditional retributive criminal justice process.³⁵⁷ Despite the latent ambiguity of restorative justice theory, this emphasis upon punishment is clearly inconsistent with its central values. Such assertions indicate that victim participants do not fully comprehend restorative justice theory. This limited understanding appears to be present across multiple practices. Despite preparation, past research demonstrates that victims did not know what their restorative process would entail or what to expect.³⁵⁸

ii. Preparation and securing victim engagement

As evidenced above, the confusion possessed by victims suggests that the preparatory interview fails in educating victims. However, the preparatory interviews pursue additional objectives, with greater success, specifically securing high levels of participation. One such objective may be the preparation of participants for the restorative practice, attempting to reduce the uncertainty of their involvement. Such an objective appears to be fulfilled to a greater extent than that of educating victims regarding restorative theory, demonstrated through victim responses to a Likert-type scale assessing preparation.

³⁵⁶Von Hirsh, A. & Ashworth, A. (1998). *Principled sentencing; Readings on theory and Policy*, Oxford: Hart Publishing.; Sanders, A., Young, R., & Burton, M., (2010) *Criminal Justice*. Oxford: Oxford University Press.

³⁵⁷Zedner, L. (2004). *Criminal Justice*, Oxford: Oxford University Press.; Von Hirsch, A. & Ashworth, A. (2005). *Proportionate Sentencing; Exploring the Principles*. Oxford Monographs in Criminal Law and Justice, Oxford: Oxford University Press.

³⁵⁸Umbreit, M. & Coates, R. (2003). Cross-site analysis of victim-offender mediation in four states. *Crime and Delinquency*. 39(4), 565-585.; Umbreit, M. (1994). *Victim meets offender: the impact of restorative justice and mediation*. New York, Criminal Justice Press; Davis, R. et al (1980). *Mediation and arbitration as alternatives to prosecution in felony arrest cases: an evaluation of the Brooklyn Dispute Resolution Centre*. New York, Vera Institute of Justice; McGarrel, E (2001). *Restorative Justice Conferences as an early response to Young Offenders*. Juvenile Justice Bulletin, August: pp1-11.

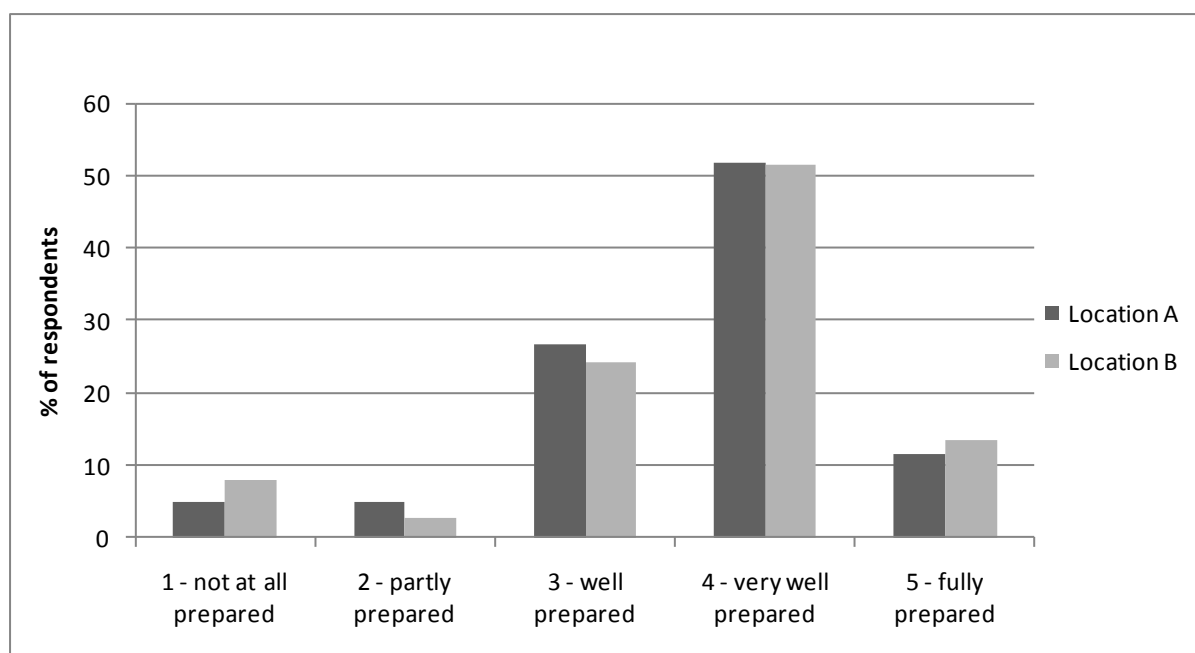


Figure 3.6 Victim preparation levels (self-assessed)

Importantly, a lack of knowledge and understanding of restorative justice amongst victims may not only result in an inability to form accurate expectations but result in low participation in interventions. This theory may offer an additional explanation to the low levels of victim participation in restorative practices. Despite being implemented for victim empowerment, closure and many other well publicised benefits, participation remains low, questioned further through the repeatedly high level of victim satisfaction recorded in previous research.³⁵⁹ Extant literature has failed to provide a definitive response to the question of why participation rests at this relatively low level. One potential reason for victim reticence is suggested from the data above, that as few victims possess any knowledge of the restorative process prior to their referral, a fear of the unknown may then operate to subdue victim engagement.³⁶⁰ Additionally, previous studies which evidence low victim participation

³⁵⁹Chapter I, footnote 158.

³⁶⁰Hill, R. (2002). Restorative justice and the absent victim: new data from the Thames Valley. *International Review of Victimology*. 9, 276-288.; Op.Cit.Fn2

attribute this to the poor quality of preparation which the victims had received from the facilitators.³⁶¹

Past studies have demonstrated the impact of preparation upon victim 'satisfaction ratings, reporting lower satisfaction rates amongst participants who received insufficient preparation.³⁶² However, even with the extensive preparation at location A and B, only a minority of victims (12 respondents from 97 or 12%) indicated that they felt 'fully prepared' for the process. It is submitted that the true purpose of preparatory meetings was not to increase understanding, but to secure the participation of reticent individuals. Such meetings offer extended opportunities to convince the participant that the restorative process represents the most appropriate resolution. This is supported with data indicating that, despite the extensive preparatory meetings, the majority of victims possessed limited understanding of the restorative process, only 8% indicated that they possessed a 'Complete understanding' of the restorative process (Figure 3.5). However, participation levels were notably higher within this practice than in past studies. This willingness to participate in the restorative justice process is further demonstrated through the overwhelming majority of participants indicating that the practice was an appropriate mechanism for addressing their offence:

From all cases received by the restorative justice programme, 89% of those were taken forward and concluded in a restorative meeting. Whilst this record can only be calculated from referred cases it should be noted that policy dictated all cases which fulfilled the criteria of being suitable for restorative justice disposal were referred to the programme. There was no formal pre-emptive stage of selection or filtering at the referral stage. This high level of participation may be explained through the extensive, individual preparation of the

³⁶¹Shapland, J., Robinson, G. &Sorsby, A. (2011).*Restorative Justice in Practice, Evaluating what works for victims and offenders*. London: Routledge.;Shapland et al. (2007). *Restorative Justice: The Views of Victims and Offenders*.

³⁶²Ibid.;Umbreit, M. (1994). *Victim Meets Offender – Impact of Restorative Justice and Mediation*. Willow Tree Press; Mansey, New York.

victim and offender undertaken by each facilitator. This allows a rapport to develop with a participant which continues through to the restorative meeting. This rapport and subsequent level of trust and confidence from both the offender and victim (observed by the researcher) may serve to facilitate these higher than average levels of engagement. This confidence victims place in their facilitator is reflected in victims' post-panel comments such as:-

“I was glad that [facilitator] was there as they had dealt with my case since the beginning. If it were anyone else I don't think I would have taken part, it needed to be someone I trusted and had confidence in....” [Interview-A013].

Within extant literature, the importance of this preparatory stage is ascribed to the opportunities to reassure victims, and instil a fuller understanding of intervention. Whilst this may describe the role of the preparatory stages examined within this research to some extent, this increased understanding among victims remains absent. What the preparatory stage provides appears to be the reassurance and trust, developed between participants and the facilitator which subsequently influences their decisions to engage and the perceived appropriateness of the process (Figure 3.7 & 3.8). Following the preparatory meetings key misconceptions relating directly to its central principles persist. This is demonstrated through significant minority of victims (33%) appearing to remain focused upon their desires for punishment. Such statements clearly contradict the central features of restorative justice.³⁶³ It would appear therefore that, despite the ability to secure victim confidence and participation, such preparation fails to rectify flawed understandings of restorative justice philosophy and objectives. This ability of the preparatory stage to increase victim participation is demonstrated through higher levels of victim participation recorded within restorative schemes which undertake extensive preparatory stages.³⁶⁴

³⁶³ See Chapter I, Section 4.

³⁶⁴ Stuart, B. (1995). *Sentencing circles Making “real” differences*. Unpublished paper. Whitehorse, Canada: Territorial Court of the Yukon.; Umbreit, M. (1994). *Victim Meets Offender: The Impact of Restorative Justice in Mediation*. Monsey, NY: Criminal Justice Press.; Umbreit, M. (1997). *Humanistic mediation: A transformation*

iii. Victim reliance upon gatekeepers, and ‘managing expectations’

The previous section identified the apparent inability of the preparatory stages to instil comprehensive knowledge or complete preparation among victims in anticipation of the restorative intervention. However, it is suggested that such preparatory meetings possess multiple objectives, including the preparation, education and participation of participants occurring concurrently with the creation and management of participant expectations. Data presented and discussed below will demonstrate that victims place significant reliance upon gatekeepers comments for both the formation of their expectations and when deciding to participate in the restorative practice.

Whilst data collected during this research suggests the preparation participants received from the restorative justice programme was unsuccessful in educating victims regarding restorative theory or the practice, it appears successful in other respects, specifically securing participation and managing victim expectations. Data collected within questionnaires implies that victim participants are incapable of forming expectations of the restorative process due to their lack of awareness or limited knowledge of restorative theory and practice. This is supported within the post-intervention interviews conducted by the researcher which explicitly identifies gatekeepers and the preparatory meetings as being crucial in the creation of those victim expectations. It is submitted that the preparatory meetings between participants and facilitators provides an opportunity for the management and creation of expectation.

When questioned, an overwhelming majority of participants stated that they were unable to form expectations of the process upon their referral. Such an absence of expectations is illustrated in victims comments that;

journey of peacemaking. *Mediation Quarterly*. 14(3), 201–213.; Umbreit, M., & Stacy, S. (1996). Family group conferencing comes to the U.S.: A comparison with victim offender mediation. *Juvenile and Family Court Journal*. 47(2), 29–39.

“I don’t know really, it was the first time I’ve ever done it, so I don’t know.”

[Interview-A001]

“I don’t know [what I was expecting] actually to be perfectly honest” [Interview-A008].

However, whilst possessing limited knowledge of restorative justice,³⁶⁵ victims appear to possess expectations of the restorative process, detailed within both the pre-intervention questionnaires and post-intervention interviews. However, the majority of victim participants (35 of 45 respondents across both locations) indicated that their expectations developed directly from facilitator comments during the preparatory interview. This suggests that in addition to the stated objectives of education and securing participation, the preparatory interview provides opportunities for the management or creation of victim expectations. The reliance which victims placed upon the comments of the facilitator when forming their expectations is reflected in the comment;

“...the leaflet they left with me – I’d probably say that was where I got most of my understanding ...” [Interview-A020].

Such reliance is further demonstrated through comments;

“I only expected what they (gatekeeper) had told me...” [Interview-A017],

“I didn’t know what to expect apart from what the police had told me...” [Interview-A018],

“...without the advice of the facilitator I don’t think that I would have any expectations...” [Interview-B003] and finally

“...without the interviewer I wouldn’t have expected anything, well I didn’t know what this process was so all I could expect was what I had been told before...”
[Interview-A022].

³⁶⁵ As established previously within this chapter.

The importance of this preparatory stage in the creation and management of victim expectations is evidenced with victims repeatedly stating that their perceptions of the process were almost exclusively based upon what they had been told either by the attending police officer, or the restorative facilitator, reflected through responses such as;

“I was expecting it to go how the facilitator said it would” [Interview-A019] and

“Well you know, just expected it to go the way the chair [facilitator] said it would.

I was expecting what she [facilitator] said would happen and what I could do and ask...it had been explained before so I knew what to expect....” [Interview-A013].

It would appear therefore, that victims who did possess expectations regarding their participation in a restorative process appear to derive such expectations primarily from their interactions with restorative practitioners and the police. Again illustrated in statements such as;

“Well We were you know, just expected it to go the way the chair [facilitator] said it would. [Interview-A009] and

“Basically what I had been told by police and the panel officer when they visited me.

Erm, yea and a bit from those leaflets you get in the post” [Interview-A011].

The low level of victim awareness pre-referral supports the theory that victim expectations are created and managed by gatekeeper comments. This lack of awareness in addition to the limited comprehension of the philosophy and process held by many participants would suggest an inability to develop individual expectations regarding the restorative process. Victim reliance upon authority figures when forming expectations reflects obedience to authority,³⁶⁶ discussed further within subsequent chapters.

However, when such preparatory interviews appear to be utilised for multiple purposes such as securing the engagement of victims, the extent to which expectations can be managed to realistically achievable levels is unresolved. A potential consequence of

³⁶⁶Milgram, S. (1974). *Obedience to Authority: An Experimental View*. London: Harper & Row Publishers.

attempting to secure victim engagement may result in an overly positive depiction of the benefits of the restorative practice. Such a consequence may additionally offer an insight into the apparent idealised, almost cliché expectations held by victims across differing methods of restorative practice recorded within extant literature.³⁶⁷

Within this research, when asked what they expected from the process or what the facilitator had suggested numerous victims immediately responded with potential outcomes including a remorseful offender and the repair, repayment or similar rectification of the damage caused. Such responses often included:-

“...an apology from them, that’s what I expected...” [Interview-A006],

“...the repair of my fence by them (offender) like the policeman said”

[Interview-A019],

“I expected some explanation and reassurance that this wouldn’t happen again”

[Interview-B007] and

“...some repayment for the damage they caused...” [Interview-B002].

The banality of clichéd expectations is also present in extant research studies. Such statements commonly involve stereotypical expressions such as ‘closure’ ‘empowerment’ ‘emotional healing’ and ‘reparation’.³⁶⁸ This would suggest that, throughout the preparatory interviews and meetings victim participants place great emphasis upon the information provided by the facilitator, police officer or other relevant gatekeeper. It appears therefore that expectations based upon comments made by gatekeepers intended to secure victim

³⁶⁷Wemmers, J. & Canuto, M. (2002). *Victim Experiences with, expectations and perceptions of restorative justice*.; Umbreit, M.S., Coates, R.B., Kalanj, B., Lipkin, R., & Petros, G. (1995). *Mediation of Criminal Conflict: An Assessment of Programs in Four Canadian Provinces*. Centre for Restorative Justice and Mediation, University of Minnesota, St. Paul, MN.

³⁶⁸Stuart, B. (1996). Circle sentencing in Canada: A partnership of the community and the criminal justice system. *International Journal of Comparative and Applied Criminal Justice*.20, 291-309.; Roberts, T. (1995) *Evaluation of the Victim-Offender Mediation Project*, Langley, B.C. Ottawa: Solicitor General Canada.; Presser, L. & Van Voorhis, P. (2002). Values and evaluation: Assessing processes and outcomes of restorative justice programs. *Crime & Delinquency*.48, 162-188.; Peachey, D. (1989). The Kitchener experiment. In M. Wright & B. Galaway (eds.), *Mediation and criminal justice: Victims, offenders and community* (pp. 14-26). Newbury Park, CA: Sage.

participation depicts an overly optimistic ideal situation. Victim participation would not be secured through the gatekeeper focussing upon the potential dangers of participation. It would appear that in cases where participants' expectations of the process do exist they appear to be premised; if not solely then predominantly upon the information the individual receives from the relevant gatekeeper. Subsequently those expectations which victims form regarding the restorative process may be influenced by the multiple competing aims of the preparatory stages seeking to secure victim participation in addition to educating the victim regarding restorative justice and preparing them for their specific experience.

4. Gatekeeper reliance in the formation of victim expectations

Victim reliance upon gatekeepers also influences their motivation for participating in the restorative justice process. Restorative justice practices within the Criminal Justice System of England and Wales remain a voluntary process (as detailed within Chapter I). Furthermore, the extent to which restorative practices exist as voluntary processes is the subject of much academic literature,³⁶⁹ (contributing to the latent ambiguity of restorative justice philosophy) with some theorists claiming that voluntary participation is central to the success of restorative programmes and that such success cannot be replicated utilising coercive measures.³⁷⁰ In light of this voluntary nature, in addition to the repeatedly low levels

³⁶⁹Walgrave, L. (1999). Community Service as a Cornerstone of a systemic Restorative Response to (Juvenile) Crime. In G. Bazemore, & L. Walgrave, (eds.), *Restorative Justice: Repairing the Harm of Youth Crime* (pp.129-154). Monsey, New York: Criminal Justice Press; Bazemore, G. & Walgrave, L. (1999). Restorative Juvenile Justice: In Search of Fundamentals and Outline for Systematic Reform. In G. Bazemore, & L. Walgrave (eds.), *Restorative justice: Repairing the harm of Youth Crime*. Monsey, New York: Criminal Justice Press; Bazemore, G. (2000). Rock and Roll, Restorative justice, and the Continuum of the Real World: A response to 'Purism' and Operationalizing Restorative'. *Contemporary Justice Review*. 3, 459-477; Dignan, J. (2002). Restorative Justice and the Law: the Case for an integrated, Systemic Approach. In L. Walgrave, (ed.), *Restorative Justice and the Law* (pp 168-190). Cullompton, Willan Publishing; Dignan, J. (2003). Towards a Systemic Model of restorative justice. In A. Von Hirsch, A. Roberts, J. Bottoms, A. Roach, K. & M. Shiff, (eds.), *Restorative Justice: Competing or reconcilable Paradigms?*. Oxford and Portland, Oregon: Hart Publishing.

³⁷⁰McCold, P. (2000). Toward a Holistic Vision of Restorative Juvenile Justice: A reply to the Maximalist Model. *Contemporary Justice Review*. 3, 357-414. For further discussion of this issue see Chapter I

of participation,³⁷¹ the motivation for victim participation and non-participation in restorative practices warrants further examination.³⁷² Whilst past research has attempted to establish those reasons for victims' non-participation in restorative justice or their reluctance to meet with their offender, the reasons for non-participation remain an area of limited knowledge.³⁷³ As noted within the literature review in Chapter I, victim non-participation generally arises from perceptions that the inconvenience is not commensurate with the loss suffered, and a persistent fear of the offender.³⁷⁴

Whilst this research attempted to gather data on non-participation, this was unsuccessful due to a lack of consent from non-participating victims. These access negotiations did however, provide some data of note. Non-participating victims dismissed the opportunity to take part in this research quickly, stating that;

“...if I couldn’t be bothered to take part in the Panel why would I want to take part in this ?”

[Access Negotiation 1].

This quotation depicts a derisory view of the restorative process, suggesting that it is perceived as something without visible benefits. The respondents statements that they “...couldn’t be bothered...” suggests that victims made a choice to not participate, that participating would be a pointless exercise not warranting their efforts or that the benefits gained would be insufficient.

³⁷¹ Chapter I, footnote 154.

³⁷² Robinson, G. & Shapland, J. (2008). Reducing Recidivism: a task for restorative justice? *British Journal of Criminology*. 48 (3), 337-358.

³⁷³ Hoyle, C. (2002). Securing Restorative Justice for the ‘Non-Participating’ Victim. In C. Hoyle, & R. Young, (eds.), *New Visions of Crime Victims* (pp. 104-105). Oxford: Hart Publishing; Davis, G. (1992). *Making Amends: Mediation and Reparation in Criminal Justice*. Routledge, London.

³⁷⁴ Sullivan, D. & Tift, L. (eds.), (2005). *Handbook of restorative justice: a global perspective*. London: Routledge.; Maxwell, R., & Morris, A. (1993). *Family, victims, and culture: youth justice in New Zealand*. Wellington, New Zealand, Social Policy Agency and Institute of Criminology, Victoria University of Wellington; Maxwell, G. Kingi, V. Robertson, J. & Morris, A. (2004). *Achieving effective outcomes in youth justice: Final report to the Ministry of Social Development*. Wellington, NZ: Ministry of Social Development.

Literature demonstrates that victim reasons for participation in restorative interventions are often varied and wide ranging. Common reasons cited within literature include: the desire to face their offender; a need for ‘closure’; the desire for speed which cannot be met by the traditional criminal justice system; and, altruistic motivations of wanting to ‘help’ a (usually young) offender or to avoid their criminalisation.³⁷⁵ Such altruistic comments included:

“I didn’t want the young boy criminalised straight away....that was the only reason to be honest.” [Interview-A005].

A number of victims within this research study shared similar motivations to those recorded in previous studies, such as desires to confront the offender and a desire for closure;

“Because she had been caught I wanted an apology because it was unnecessary and I wanted paying back for it.” [Interview-A010] and;

“I wanted to know what he was, who he was like, and a chance to confront him ...I wanted to know why, I wanted to know his side of it and if he was going to give me the bull shit ‘sorry’ or whether it was going to be genuine” [Interview-A004].

However, victims additionally stated that their decision to participate was governed predominantly by advice of authority figures such as the police or restorative facilitator:-

“... I was advised by the police at the time that it would be a good way of maybe proceeding with the victim...” [Interview-A006] and

“...the police officer who was dealing with me ... said this was the best option so I chose this.” [Interview-A009].

The above motives illustrate a prominent role occupied by the gatekeeper throughout victim deliberations over participating in the restorative justice process.

³⁷⁵Daly, K. &Stubbs, J. (2006).Feminist engagement with restorative justice.*Theoretical Criminology*.10 (1), 9-28.; Doak, J. &O’Mahony, D. (2006).The vengeful victim?Assessing the attitudes of victims participating in restorative youth conferencing, *International review of victimology*. 13 (2), 157-177.

Such reliance upon gatekeeper advice reiterates the point made previously that despite limited awareness and understanding of restorative justice, victims somehow perceived the process as being appropriate for the offence (Figure 3.7 & 3.8) due to comments and assurances of the police and facilitator. A majority (69 of 97) of victim participants across both locations indicated that their decision to participate in the restorative justice process arose from the recommendations by the referring police officer or restorative facilitator. The prominence of police comments can be clearly demonstrated through a brief review of victim responses during the post intervention interview, with comments including:

“Basically what I had been told by the police and the panel officer when they visited me...”

[Interview-A011],

“I didn’t know what the panel was so I wasn’t sure if I wanted to take part ... until the facilitator said that it was the only option” [Interview-A027],

“I only took part because the police made it clear that they would not take any other action...they said I should do it” [Interview-A005]

“I decided to do it because of what the policeman and chair person told me, I wouldn’t know what other options are available to be honest so I did what I was told...” [Interview-B015].

Quotations which indicate victims’ engagement was predicted upon gatekeeper advice depicting restorative justice as the only option for further action reiterates the persistent concerns within extant literature regarding the potential for net widening through restorative justice practices.³⁷⁶ This data suggests that victims’ lack of knowledge and comprehension of restorative justice (as indicated above) contributes to significant reliance upon the

³⁷⁶Prichard, J. (2010). Net-widening and the diversion of young people from court: A longitudinal analysis with implications for restorative justice. *Australian and New Zealand Journal of Criminology*. 43(1), 112-129.; O'Mahony, D. and Doak, J. (2004). Restorative Justice -- Is More Better?: The Experience of Police-Led Restorative Cautioning Pilots in Northern Ireland. *Howard Journal of Criminal Justice*. 43(5), 484-505.

recommendations of the police and, subsequently, the restorative facilitator when determining their participation in a restorative justice intervention. Such findings clearly demonstrate the importance of the gatekeepers when examining victim motivation for participation within restorative justice processes and the formation of expectations of that process.³⁷⁷

5. Victim Expectations, Process and Offender

Whilst empirical research exploring restorative justice has reached voluminous amounts, many studies focus upon quantitative assessments of service delivery criteria, such as victim satisfaction.³⁷⁸ This thesis argues that the expectations held by victims engaging in restorative justice are of importance when exploring victim engagement levels and satisfaction.³⁷⁹ The importance of expectations in relation to victim experiences of the criminal justice system is identified within past research.³⁸⁰ Studies have determined that where participants' expectations are elevated beyond that which can be fulfilled, their subsequent disappointment dramatically reduces their satisfaction.³⁸¹ Alternatively, if victim expectations are particularly low, this may preclude their engagement in restorative processes, again offering one potential explanation into the low levels of victim engagement.³⁸²

³⁷⁷ Blagg, H. (1997). Just Measure of Shame; Aboriginal Youth and Conferencing in Australia. *British Journal of Criminology*. 37 (4), 481-501.

³⁷⁸ Umbreit, M. (1993). Juvenile offenders meet their victims: the impacts of mediation in Albuquerque, New Mexico. *Family and Conciliation Court Review*. 31(1), 90-100.; Umbreit, M. (1996). Restorative justice through mediation: the impact of offenders facing their victims in Oakland. *Journal of Law and Social Work*. 5(1), 1-13.; Achilles, M., Halbert, E., Mika, H., StutzmanAmstutz, L. & Zehr, H. (2010). *Taking Victims and Their Advocates Seriously: A Listening Project* Harrisonburg, VA: Institute for Justice and Peacebuilding at Eastern Mennonite University. <http://www.restorativejustice.org/10fulltext/mika/view> .; Chatterjee, J. (1997). *A Report on the Evaluation of RCMP Restorative Justice Initiative: Community Justice Forum as Seen by Participants*. Ottawa, Ontario: Royal Canadian Mounted Police, Research and Evaluation Branch.

³⁷⁹ See Chapter I, Section 4.

³⁸⁰ Op.cit.Fn.66

³⁸¹ Erez, E., L. Roeger, & F. Morgan. (1994). *Victim impact statements in South Australia: An evaluation*. Adelaide: South Australian Attorney General's Department.; Sanders, A., Hoyle, C., Morgan, R., & Cape. E., (2001). Victim impact statements: Don't work, can't work. *Criminal Law Review*. (June), 447-458.

³⁸² See Chapter 1, Section 4, v, footnote 154.

Victim expectations often range from a desire to receive reparation (in a small number of cases) to discover the motives of the offender, the selection of the victim and the opportunity to explain the emotional impact of the offence.³⁸³ Research which has been conducted suggests victim expectations remain consistent across very different schemes.³⁸⁴ This consistency is mirrored within the attitudes of victims regarding different offences in different systems in being extraordinary similar,³⁸⁵ suggesting the existence of idealised expectations,³⁸⁶ possibly as a result of reliance upon gatekeeper comments, intended to secure participation of reticent victims. The following sections address the divergence in victim expectations regarding the procedures of the restorative practice which received positive expectations, and those elements dependent upon offender compliance, which resulted in negative expectations.

i. Positive Procedural Expectations

A clear division was evident within the data between procedural expectations and those reliant upon a compliant offender. Expectations related to the restorative process were positive, with a large proportion of respondents indicating their belief that it would be very

³⁸³ Aertsen, I. & Peters, T. (1998). Mediation for reparation: the victim's perspective. *European Journal of Crime, Criminal law and Criminal Justice*. 6 (2), 106-124; McCold, P. & Wachtel, B. (1998). *Restorative Policing Experiment: The Bethlehem Police Family Group Conferencing Project. Summary*. Community Service Foundation. Pipersville, Pennsylvania; Strang, Heather (2002). *Repair or Revenge: Victims and Restorative Justice*. Clarendon Studies in Criminology. Oxford and New York. Oxford University Press.

³⁸⁴ Coates, R. & Gehm, J. (1989). An Empirical Assessment. In M. Wright & B. Galaway (eds.), *Mediation and Criminal Justice* (pp. 251-263). London, UK: Sage.; Strang, H., Barnes, G., Braithwaite, J., & Sherman, L. (1999). *Experiments in restorative policing: A progress report on the Canberra Reintegrative Shaming Experiments (RISE)*. Australian Federal Police and Australian National University. [Online] <http://www.aic.gov.au/rjustice/rise/progress/index.html>

³⁸⁵ Shapland, J. (1986). Victims and justice: needs, rights and services. In J. van Dijk, C. Haffmans, F. Ruter, J. Schutte & S. Stolwijk (eds.), *Criminal Law in Action* (pp. 393-404). Arnhem: Gouda Quint.; Shapland, J. (1986). Compensation by offenders: a British study. In S. A. Thorvaldson (ed.), *Crime and redress: national symposium on reparative sanctions*. Canada: Programs Branch Solicitor General Canada and Research and Evaluation Division Ministry of Attorney General British Columbia.

³⁸⁶ Flaten, C. (1996). Victim-offender mediation: Application with serious offenses committed by juveniles. In B. Galaway, & J. Hudson (Eds.), *Restorative Justice: International Perspectives* (pp. 387-401). New York: Criminal Justice Press.; Hughes, S. & Schneider, A. (1989). Victim-Offender Mediation: A Survey of Program Characteristics and Perceptions of Effectiveness. *Crime & Delinquency*. 35(2), 217-233.; Umbreit, M. & Brown, K. (1999). *Victims of severe violence meet offenders in Ohio* Crime Victims Report.; Strang, H. (2002). *Repair or Revenge: Victims and Restorative Justice*. Oxford: Oxford University Press.

likely or quite likely that they would experience those benefits such as the opportunity to voice their opinion during the restorative process (Figure 3.7). Such data suggests that descriptions made by the facilitator when securing participation results in victims valuing those procedural aspects of the process more positively when compared to aspects reliant upon offender behaviour. This suggests that those negative expectations of the offender remain unchallenged within the preparatory meetings.

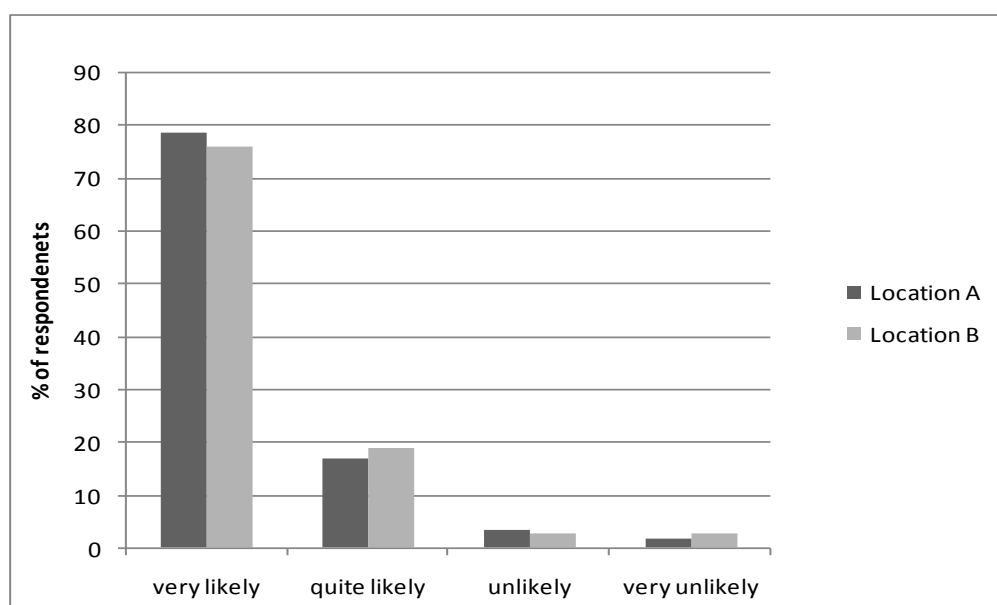


Figure 3.7 Victim expectation of being able to voice their opinion during the restorative process

Within the free narrative responses of the questionnaires, a majority of victims indicated that the opportunity to ‘have a voice in the process’ was of greatest importance, with common responses including:

“I can ask the offender why they assaulted me” [Questionnaire-A009];

“That I can ask him why he did it” [Questionnaire-B008];

“An explanation and repayment of the ‘stolen’ money” [Questionnaire-B004]

Additionally, a large majority of victims (91% or 88 of 97) identified being treated fairly during the restorative justice process as being very likely or quite likely. This again demonstrates the positive expectation regarding procedural aspects of the restorative justice process are more likely to be fulfilled when compared to aspects of the process reliant upon the offender, such as genuine expressions of remorse.

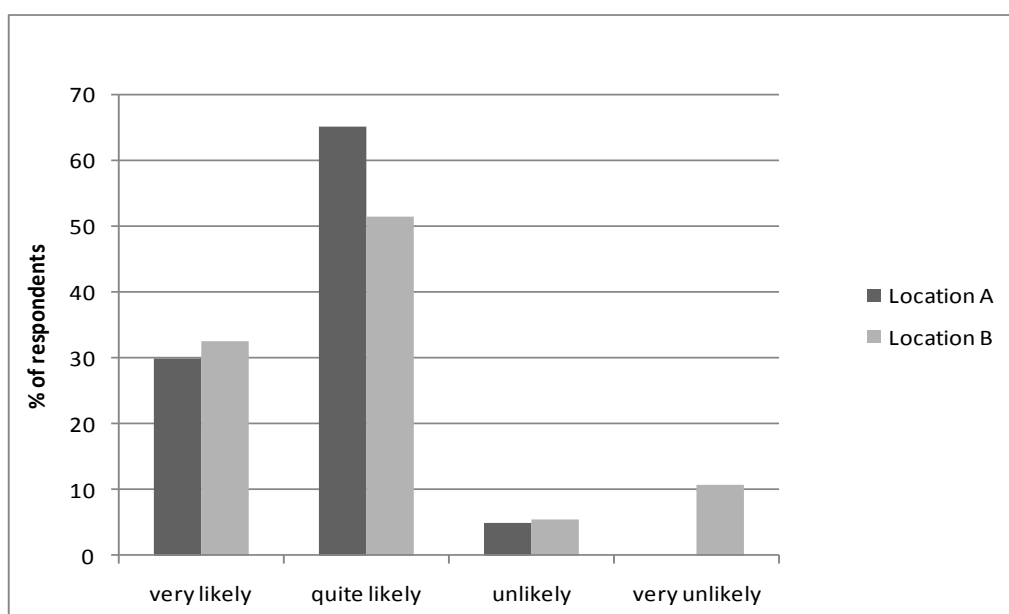


Figure 3.8 Victim expectation of being treated fairly during the restorative process

ii. Negative Offender Expectations

Within the pre-intervention questionnaires, victims were provided with a range of statements from which to select what they expected from the restorative process. These statements included an apology by the offender, for the damage to be repaired and reassurance against future offending. Participants were invited to indicate their perceived probability of each statement being fulfilled during the restorative process. As stated, 78% of victims repeatedly selected the opportunity to voice their opinion and the opportunity to

actively participate in the process as being ‘very likely’ to occur. Furthermore, 52% of victims indicated that it was unlikely that the offender would either acknowledge the damage caused or provide reassurance against future offending, illustrated in Figure 3.9, below:

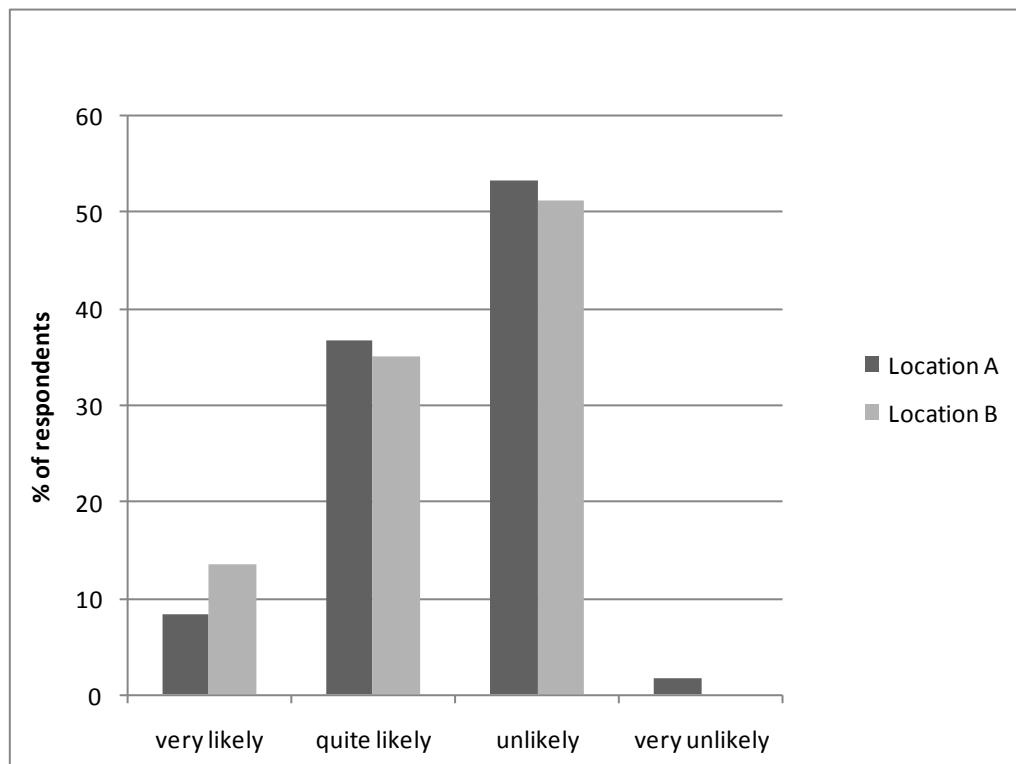


Figure 3.9 Victim expectation of the damage being acknowledged by the offender

These responses appear to indicate that, whilst victims appear to perceive procedural aspects of restorative processes as having relatively high likelihood of fulfilment, those relating directly to the offender are more negative. Whilst victims indicated that it was ‘very likely’ or ‘quite likely’ that they would receive an apology from the offender, the expectation of a genuine apology was far less likely.

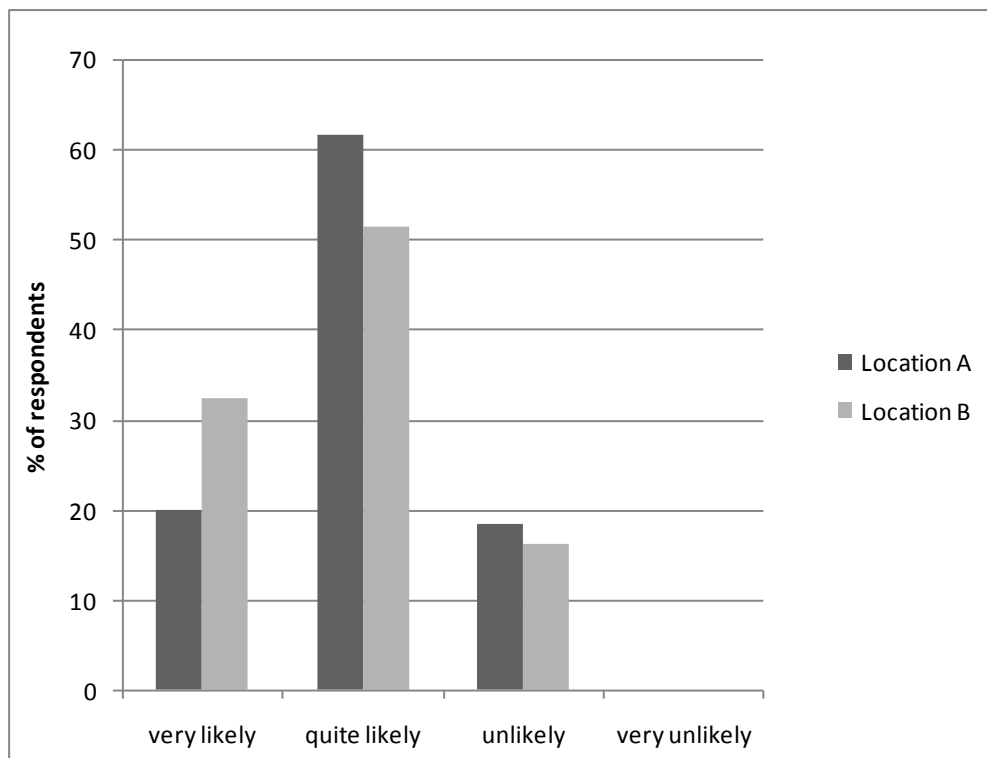


Figure 3.10 Victim expectation of receiving an Apology from the Offender

However, substantially fewer victims (40% or 39 of 97 respondents) expected such offers of apology to be genuine and sincere. The extent to which victim participants remain sceptical regarding offender interaction during the restorative practice is demonstrated through comparing Figure 3.10, likelihood of receiving an apology, with Figure 3.11; likelihood the apology will be genuine. This demonstrates that those negative expectations which victims possess regarding the offender remain unchanged during the preparatory meetings.

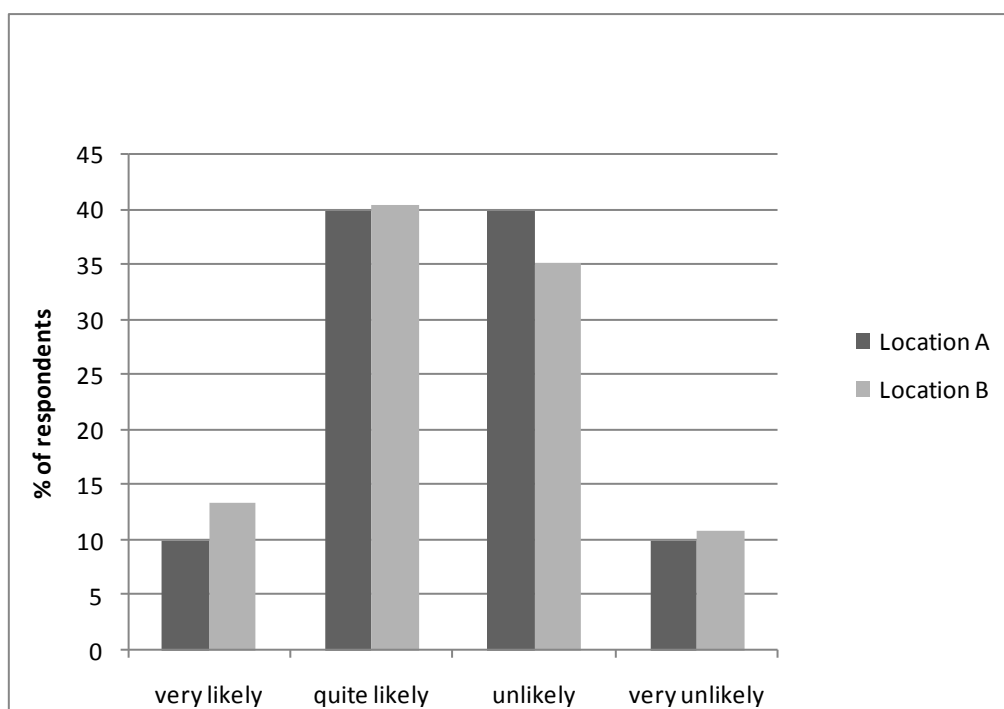


Figure 3.11 Victim expectation of receiving a genuine apology

Such concerns regarding a lack of genuine remorse within an offenders' apology are demonstrated through responses such as:-

“A fake apology” [Questionnaire-A009]

“Probably say sorry but not really mean it.” [Questionnaire-A024].

Those negative expectations which victims express appear to be focussed upon the offenders' interaction; whether they would be sorry (or lack remorse), if they would attend and whether they would engage with the process. These aspects of the process were further developed throughout the semi structured interview conducted following the restorative process;

“... I didn't expect him to mean it really.” [Interview-A014] and

“I understand the process and expected the process but I expected it to be a bit more volatile” [Interview-A002].

Such surprise at the success of the restorative meeting demonstrates victims' perception of the process as being somewhat cynical, expecting failure. Similar 'negative expectations' can be seen within statements:

“... I was expecting was a couple of loud kids, I wasn't expecting them to be sensible” [Interview-A008] and;

“...well no I wasn't expecting them [offender] to be so sorry...”

[Interview-A017].

When viewed together with the victim perceptions regarding the likelihood of an apology it would appear to indicate that, whilst victims expect an offender to express an apology, they have reservations over the sincerity of such expressions. This suggests a divergence between procedural aspects of the restorative justice process, such as the opportunities to interact and voice their opinions, and those more reliant upon the offender, such as expressions of sincerity and remorse.

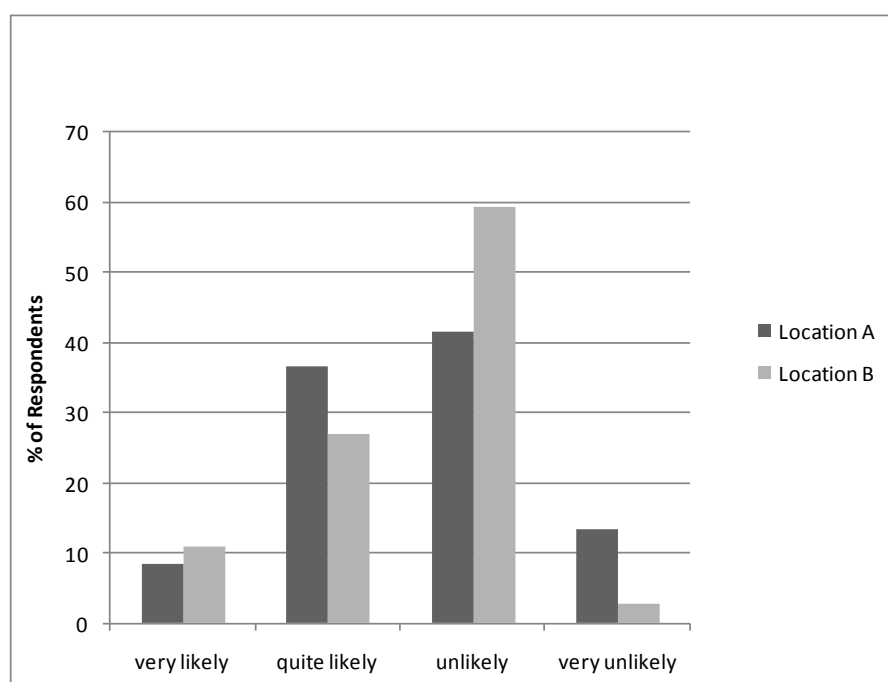


Figure 3.12 Victim expectation of reassurance against future victimisation

These negative expectations which exist when addressing offenders' actions are further present in victim responses indicating that the majority perceive it as unlikely that damage caused by the offender would be acknowledged and furthermore it would be unlikely that damage be repaired. Further evidence of victims' negative expectations is demonstrated through the repeated selection of 'unlikely' when addressing the probability of receiving any reassurance against future offending (Figure 3.14). Whilst a substantial majority of victims think the offender will apologise, a similarly high proportion think offender will not show remorse, this is further mirrored in the significantly low proportions of victims who indicated that they **expected** the offender to change their behaviour following the restorative process.

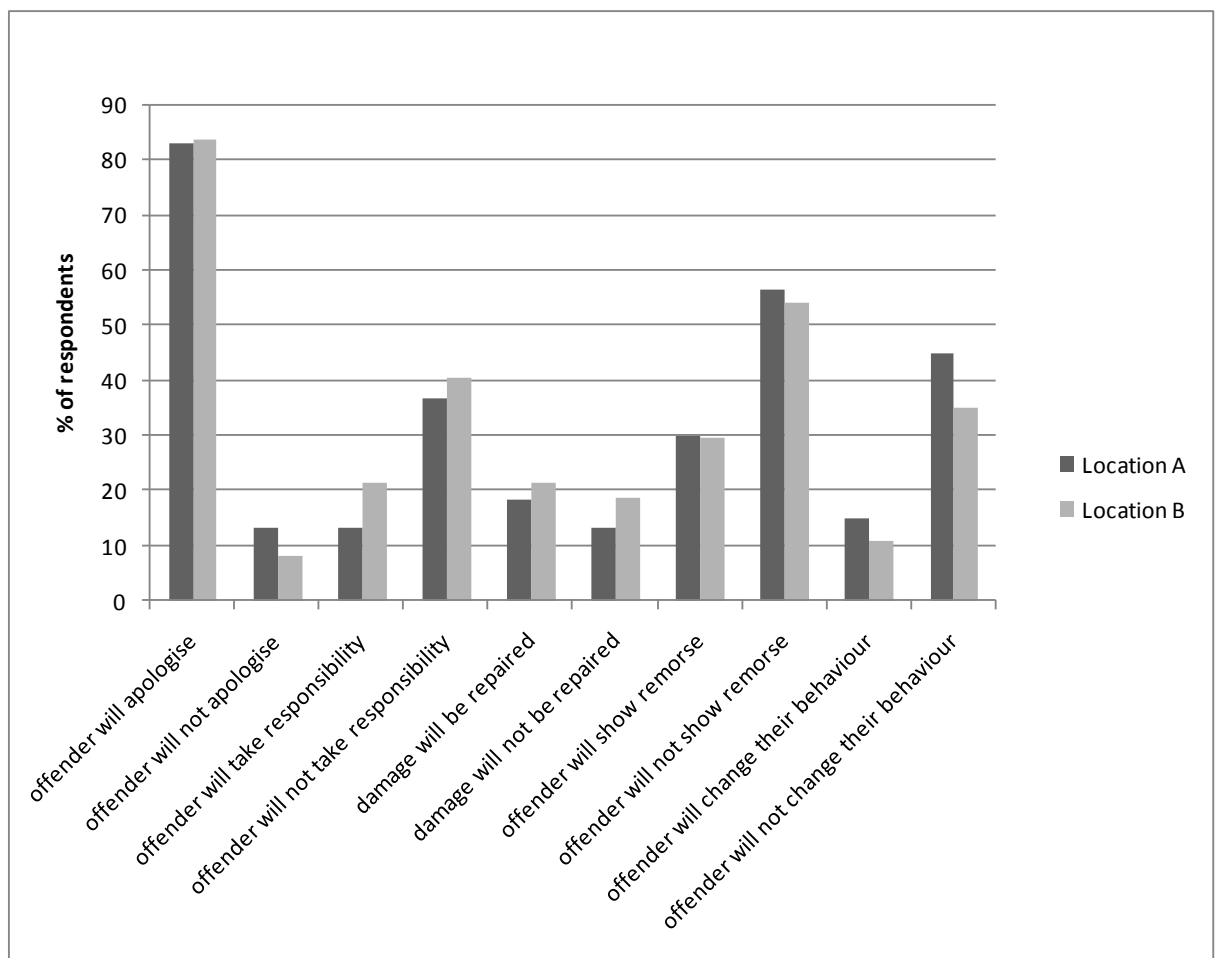


Figure 3.13 Victim expectations of the restorative justice outcomes

A further indication of victims concerns regarding the actions or behaviour of offenders during the restorative process is indicated through 39% (or 37 of 97) of respondents who stated they expected the offender would not take responsibility for their actions (Figure 3.13). Furthermore, a notable proportion of victims within Location A felt that the restorative justice process would have no impact upon the offender, reiterating those negative expectations of the offender:

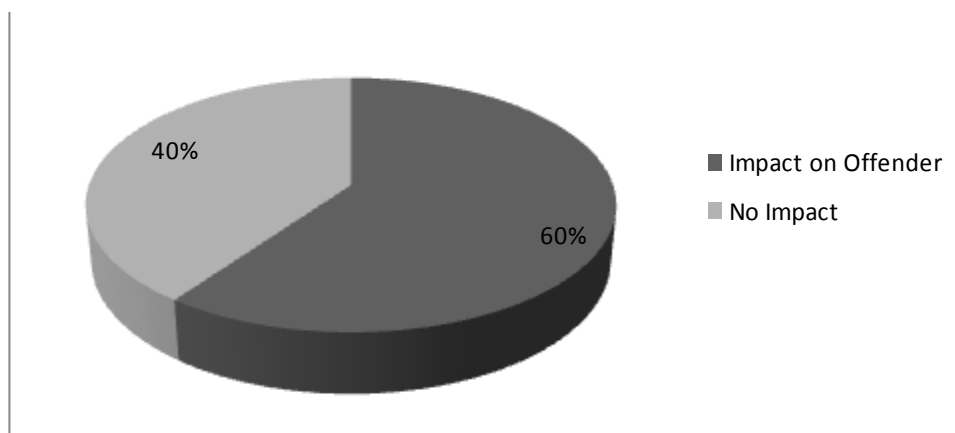


Figure 3.14 Victim expectation of the impact of restorative justice on the offender – location A

Data suggests that a number of participants remain unconvinced as to its potential to affect the offender. Such reservations or reluctance to accept the claims of restorative justice regarding offender responsibility and reformation are similarly present within location B of this research.

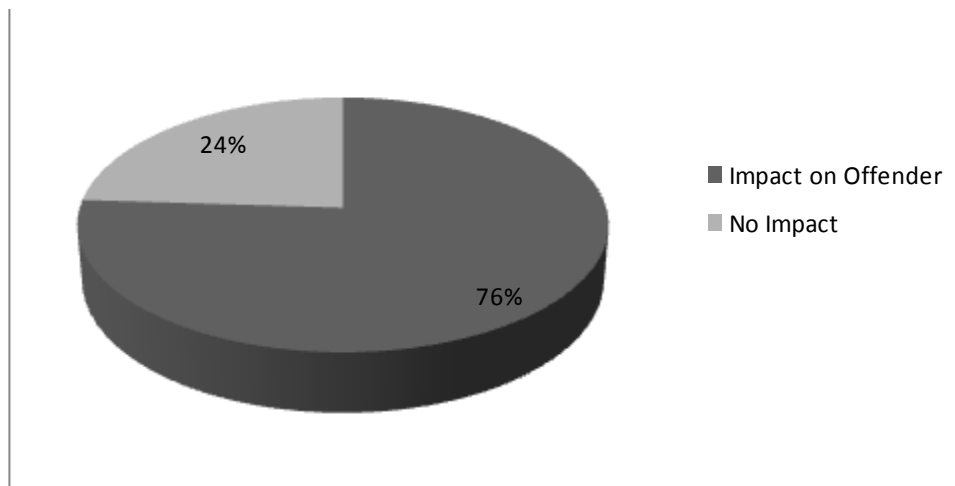


Figure 3.15 Victim expectation of the impact of restorative justice on the offender – location B

It is suggested, that negative expectations regarding the offender may explain those low levels of victim participation within restorative justice processes, recorded within past studies.³⁸⁷ Specifically, participants remain sceptical over the central claims of restorative justice theory, that offenders will take responsibility and engage with the process in a productive manner. This appears to persist in spite of the extensive preparatory meetings undertaken by the restorative facilitators.

6. Summary and conclusions

Data presented within this chapter addresses the expectations and comprehension of restorative justice held by victims prior to their participation. It established that across both locations victims possess a significant lack of knowledge regarding both the theory of restorative justice and its practice.

This limited victim awareness established within this study may offer an explanation to the perplexing issue of low victim engagement within numerous restorative justice initiatives recorded throughout extant literature. Participants may remain unaware or

³⁸⁷Doak, J. & O'Mahony, D. (2006). The vengeful victim? Assessing the attitudes of victims participating in restorative youth conferencing. *International review of victimology*. 13 (2), 157-177.

unconvinced of the benefits of restorative justice which impacts upon their desires to participate. It reiterates comments within literature emphasising the importance of the preparation of participants prior to their restorative justice intervention, whilst suggesting that such preparatory stages do not succeed in preparing participants completely for the process nor does it serve to educate them completely over the restorative justice process. This may result from the multiple objectives of the preparatory stage which additionally attempts to secure victim participation in the restorative justice scheme. Empirical data from this study suggests that victims are unable to form expectations without assistance prior to their engagement. This reliance upon gatekeeper for the formation of expectations is also present within victim motivations, which emanate directly from gatekeeper comments. Those limited expectations which victims possess appear to reflect banal descriptions of the restorative process, often employed within advocates' calls for greater implementation of restorative practices. However, within victim expectations a divergence exists between procedural elements which are perceived more positively than those which are reliant upon offender compliance, such as the sincerity of apologies or expressions of remorse.

Subsequent chapters proceed to establish the experiences of victims participating in the restorative justice practice, and explore the potential nexus between participant expectation and experiences of the restorative justice practice.

Chapter IV

Formality, Responsibility and Resistant Retribution: Victim Experiences of the Restorative Justice Process

1. Introduction

This chapter presents empirical data collected throughout the semi-structured interviews conducted with the victim following the conclusion of their restorative meeting, specifically examining their experiences of the process.³⁸⁸ It appears that significant numbers of victims within this research possessed a flawed understanding of what constituted restorative justice,³⁸⁹ and these misconceptions transferred to their expectations of the process. Section 2 begins by identifying a desire among victims for authority within the restorative process, specifically relating to the presence of the police and the role of the facilitator during the restorative process. Following this, a related theme of formality is identified and empirical data is discussed alongside relevant literature within section 3. Again the presence of uniformed police is identified as being important to victims due to their associated formality. Section 4 then addresses the responsibility of victim participants in the restorative justice practice, illustrating their rejection of responsibility within the empirical data. Contrary to extant literature,³⁹⁰ victims within this research actively avoided assuming a decision making role during the restorative process, preferring the facilitator undertake such tasks. Finally, section 5 addresses the outcome of the restorative process and the extent to

³⁸⁸ Previously detailed within Chapter II, Methodology

³⁸⁹ Identified within the previous Chapter (V).

³⁹⁰ Discussed in greater detail within chapter II, with regard to; Christie, N. (1977). Conflicts as Property; Zehr, H. (1985). *Changing Lenses*; McCold, P. (2008). The recent history of restorative justice: mediation, circles and conferencing. In D. Sullivan, & L. Tifft (eds.), *Handbook of Restorative Justice*. London, UK: Routledge. Eglash, A., (1977). *Beyond Restitution: creative restitution*. In J. Hudson and B Galaway (eds.) *Restitution in Criminal Justice*. Lexington, MA: DC Heath.; Barnett, R., (1977). Restitution: a new paradigm of criminal justice. *Ethics*. 87, 279-301.

which victims valued those outcomes more highly than process itself, again contrary to claims within past literature.³⁹¹ Data presented throughout this chapter demonstrates the victim experiences of the restorative process are mixed, appearing to value some aspects of the practice whilst responding negatively to others. The discussions of this chapter provide the basis for the examination of the connection between victim expectations and experiences examined within the subsequent chapter.

2. Authority

Analysis of data collected within the semi-structured interviews,³⁹² identified an emergent theme of authority. Focussing upon the role of authority during the restorative meeting, data demonstrated a desire among victims that the process incorporates visible figures of authority. Victims repeatedly referred to authority and the police simultaneously, perceiving a police presence and their authority as being an essential consideration in their decisions to engage in the restorative justice process. Interestingly, whilst the facilitator and their role are mentioned explicitly by victims when discussing formality, it would appear that facilitators are not perceived as equal to the police representatives in their authority. This chapter will demonstrate that the position of the facilitator and their apparent lack of authority are explicitly mentioned within victim comments addressing the critical nature of the police presence. Significantly, however, victims rejected the suggestion that the police presence could also assume the role of the facilitator, (see section 4, iii). This chapter argues that, whilst victims appear to view the presence of the police as essential throughout the process, their role should not extend to encompass the duties of the facilitator. This again appears to reiterate the previous argument regarding courtroom imagery which victims project upon the

³⁹¹Shapland, J., Dignan, J., Robinson, G., Atkinson, A., Colledge, E., Howes, M., Johnstone, J., Sorsby, A. & Atkinson, H. (2006). Situating Restorative Justice within Criminal Justice. *Theoretical Criminology*. 10(4), 505-532.; Zernova, M. (2007). *Restorative Justice - Ideals and Realities* Vermont, USA: Ashgate Publishing.

³⁹²Detailed within Chapter II, Methodology.

restorative process, with the police assuming a role similar to that in the traditional justice system whilst not encroaching upon those duties traditionally the preserve of an independent judiciary.

i. ‘Essential Authority’ and the Police

A central theme which emerged from the qualitative data was the critical importance of the police presence throughout the restorative meeting. Repeatedly, victims would describe the role fulfilled by the police as being of crucial importance and a central factor in their decision to engage with the restorative process. A large majority of victims across both case studies (41 of 45 interviewees) identified the authority which was conveyed to the process through the presence of a police officer.³⁹³ Whilst the degree of authority varied depending upon the status of the police representative, whether a PC or PCSO,³⁹⁴ the basic nature of victims’ comments remained consistent, that without a police presence the restorative justice process would lack the necessary authority.

The desire for aspects of the traditional justice process, such as formality, is reiterated within victim comments regarding the presence of police officers throughout the restorative process. Victims repeatedly identified a police presence as being of critical importance to the restorative practices, with specific reference to their authority and the extent to which their presence conveys that authority upon the restorative meeting. This is demonstrated through statements made during the qualitative interviews such as:

“The police definitely need to be there. Absolutely...definitely. It identifies it as a serious matter. ” [Interview-A006];

³⁹³ Authority has similarly been identified as important to success within Young Offender Rehabilitation programmes, Whyte, B. (2004) ‘Effectiveness, Research and Youth Justice’. *Youth Justice*. 4 (1), 3-21 at p.13; Andrews, D., Hollins, C., Raynor, P., Trotter, C. &Armstrong, B. (2001).*Sustaining Effectiveness in Working with Offenders*. Glamorgan, Cognitive Centre Foundation.

³⁹⁴Discussed in greater detail within Chapter V.

“... it’s important that the policeman was there... it gives the whole process more authority, I’m not sure I would have participated in the panel if I had known that there would not be a PC present ...” [Interview-A005].

This emphasis upon the police appears to contradict past assertions that victims have repeatedly suffered from the resolution of conflicts by professionals, and that such detriment is best rectified through the exclusion of justice professionals in favour of resolution from direct stakeholders.³⁹⁵

Victim desires for greater formality within the process through more traditional, court-room based use of space and environment. This appears to reject those assertions, advocated by maximalist restorative theorists,³⁹⁶ that restorative justice should exist separately from the criminal justice system. Victim comments repeatedly emphasised their desire that the process is, or indeed should be seen as part of the criminal justice process, reflected and reinforced by victims’ desire for the presence of police officers during the Panel. The desire for the integration of the restorative process within the existing criminal justice system is demonstrated through assertions such as:

“..well its meant to be instead of the court isn’t it, so the police should be there as we’re still in the justice system ... there is still a crime that needs punished” [Interview-B015].

“...the police being there is good, it reminds everyone that this is a serious, criminal process...” [Interview-B009].

This attitude of integrating the restorative process within the criminal justice system is present among other interviews including:

³⁹⁵ Christie, N. (1977). Conflicts as Property.

³⁹⁶ Walgrave, L. (1999). Community service as a cornerstone of a systemic restorative response to (juvenile) crime. In G. Bazemore & L. Walgrave (eds.), *Restorative juvenile justice: Repairing the harm of youth crime* (pp. 129-154). Monsey, NY: Criminal Justice Press.; Boyes-Watson, C. (2000). *Reflections on the Purist and Maximalist Models of Restorative Justice* Contemporary Justice Review 3(4): 441-450.

“the police really need to be there as its only them that makes you realise that you’re in the justice system, even if you’re not in a court as such, it should be the same thing really...” [Interview-A027].

This desire for additional “authority” provided by the presence of the police supports previous arguments regarding victims’ desire for the recognition of victims and offenders, utilising the environment, demarcation of space and the process to reinforce those labels. Some victims go further explicitly stating that they valued the presence of a police officer as they reminded participants why they were present, due to the offence:-

“...you really need a policeman there, otherwise you lose sight of the reason all this is happening, that they [offender] did a crime and this is the result....instead of going to court....without the police there you would lose sight of that and I’d question why we were there...” [Interview-B004].

This represents a clear rejection of restorative justice theory advocated by central theorists who emphasise the role of restorative justice in repairing harm and the avoidance of stigmatisation resulting from the labelling process directly related to acts of judgement regarding the offender and their actions.³⁹⁷ Indeed, as stated within the previous chapter when addressing victim expectations, the majority of victims stated they would not participate were the police not present. This suggests that whilst victims appear to be willing to engage in restorative practices it is predicated upon the assumption that the restorative process exists as a formal part of the traditional criminal justice system, despite the apparent inconsistencies they may pose to restorative justice theory or principles.

Furthermore, comments made by some victims during the qualitative interviews distinguished between the presence of police constables and police community support

³⁹⁷Consedine, J. (1999). *Restorative Justice, Healing the effects of Crime*. Lyttelton, New Zealand: Ploughshares Publications.

officers, appearing to prefer the former due to the apparently higher levels of authority which they conveyed. This is reflected in comments such as:-

“Well putting a PCSO lessens it, it’s not as authoritative, PCSOs have some powers but, all being fair they aren’t much greater than traffic wardens are, they can enforce summary offences and a power of detention they never use for health and safety uses. If I know this and the kids on the street know this it’s not important enough to have a policeman there.” [Interview-A005].

Such sentiment is reflected again with victims’ responses during interview:

“I think it’s really important having a police officer there, otherwise it’s just like sitting with a civil servant...” [Interview-A010].

The value accorded to the police presence by victims varied depending upon the position of the officer who attended the meeting. In some cases victims reported that whilst they appreciated the police presence they would have preferred a police constable as opposed to a police community support officer or special constable. Whilst such comments were present in a minority of responses (only 6 across both case studies), the absence to distinguish between different ranks of police officers may result from victims being unaware of the status of the police representative in attendance or being unaware of police ranks. Within those justice panels where the victim identified the police officer as being a PCSO or Special Constable, they appreciated their presence but expressed disappointment or frustration that a police constable was not able to attend. Such attitudes are reflected in comments including:

“I was expecting a police officer to be there, not a PCSO. ...With all due respect for PCSO’s they can’t go and say you’re under arrest ... the fact we were in a police station, or the building next to a police station there’s no reason why a copper couldn’t have popped down for 5 minutes and sat in and said look this is what could have happened to you [offender]....” [Interview-A005].

When questioned further regarding these negative perceptions, victims responded with comments regarding authority, police powers and public perceptions of PCSO's. This is demonstrated in the following quotations and again appears to illustrate victims' desire of for a formal process integrated within the traditional criminal justice system. This however appears to contradict those central values of traditional restorative justice theory.

“you don't get that authority with a PCSO like you do with an real PC....and I think this sort of thing needs that authority because the way it is set up, in a circle with everything ... it doesn't have the authority or clout of a court, I think the offender needs to have that....it's what we're there for at the end of the day isn't it....”
[Interview-A022].

This is reiterated within assertions that:

“I think you need that authority...it makes them realise it's a serious matter and a real justice or criminal process...actually maybe it could be made a bit more formal so it's even clearer...” [Interview-A028].

“I think it was good that there was a clear police presence, I think they [the offender] needed to see someone like that in authority to make them realise the reasons they were there, in that situation. I don't think that it would have worked as well without the police there; otherwise it would have just been more like a group of social workers like informal... that wouldn't have worked and I don't think I would have taken part...”

[Interview-A014].

This emphasis upon a police presence reinforces the desire of victims that ‘their case’ is treated seriously by the criminal justice process. This rejects theories that resolution outside of the formal constraints of criminal justice is a preferential alternative.³⁹⁸ Furthermore, the

³⁹⁸ Christie, N. (1977). Conflict as Property.; Barnett, R. (1977). *Restitution: A new paradigm of criminal justice.*; McCold, P. (2000). *Toward a Holistic Vision of Restorative Juvenile Justice.*; Braithwaite, J. & Strang,

emphasis upon police constables as opposed to PCSOs could represent a rejection of informal conflict resolution, preferring the process to occur within the visible shadow of the criminal justice system.

ii. The Facilitator, Control and Authority

A second sub-theme of authority permeated victims' discussions of the restorative process during interviews. A majority of victims held perceptions that facilitators, whilst controlling the process and directing its outcome, lacked the necessary authority which was provided by the police presence. Whilst not explicitly criticised, this perceived lack of authority possessed by the facilitator is present within comments made by victims discussing the presence of the police.³⁹⁹ This is illustrated though statements such as:

"I'm glad there was someone formal, like a police... I don't think it would work without them, if it was a social worker or whatever" [Interview-A031].

Such statements depict facilitators in a negative light, emphasising the difference between a visible source of authority in uniform and 'just...a civil servant.' Such sentiment was present throughout victim responses during the qualitative interviews, with the facilitator often referred to in comparison to the benefits of having a police officer present. As such, the facilitator is repeatedly depicted as lacking authority, being representative of a school teacher or civil servant who is inappropriate to deal with the serious nature of adult offenders. Again this negative comparison is demonstrated in follow up comments including:

"They were more like a teacher trying to deal with a bad student ... explaining things to them and stuff which would be good if they [offender] were a kid...but they're an adult so I don't know really" [Interview-A021].

H. (2001). *Restorative justice and civil society.*; Boyes-watson, C. (2000). *Reflections on the Purist and Maximalist Models of Restorative Justice.*

³⁹⁹ See Chapter II, Methodology, Section 4. The Research setting: Community Justice Panels, for detailed explanations of the Facilitator, their role and their status within the restorative justice process.

However, such a perceived deficiency in authority does not appear to impact upon victim assessments of the facilitator, or their success in running and controlling the restorative meeting. It would appear that victims perceive the facilitator role separately from the provision of authority, with an emphasis upon their ability to conduct the restorative meeting. Repeatedly, interviews in which the victim alludes to the lack of authority possessed by the facilitator often include high levels of satisfaction with the way the restorative meeting was run and with its outcome. Such a distinction can be seen within statements such as:

“Well the facilitator was good ... they ran it really well and I got exactly what I needed from it...but I still think that it needed the police there as something extra...”

[Interview-A019].

Such positive assessment is reiterated in comments made by other victims including:

“The facilitator carried it all out really well they were in control and it was done really good but I still wanted the police there...” [Interview-A010].

The role of facilitating the restorative process and the provision of authority appear to be perceived by victims as being two separate, distinct roles which can be fulfilled by different individuals. The above quotations appear to suggest that victims recognise this distinction, and look to different individuals to fulfil those roles during the restorative process. They allocated the provision of formality and control of the restorative process to the facilitator, whilst relying upon a uniformed police presence for provision of authority. In similar manner to the importance of formality within victim assessments of the process, this emphasis upon a clearly uniformed agent of the traditional criminal justice process being present and having importance through their ability to convey authority appears to contradict several central elements of restorative justice theory discussed within theoretical literature.⁴⁰⁰ Specifically, it would appear to contradict maximalist theorist claims that restorative justice should exist as

⁴⁰⁰Walgrave, L. (1999).; Bazemore, G. & Walgrave, L. (1999).; Dignan, J. (2002). Restorative justice and the law: the case for an integrated, systemic approach. In L. Walgrave (ed.), *Restorative Justice and the Law*. Devon: Willan.

distinct from the apparatus of the traditional criminal justice system, its principles and governing paradigms.⁴⁰¹

Despite the importance accorded to police presence, victims rejected the suggestion that those police officers should assume the role of the facilitator. Comments made by numerous victims throughout the qualitative interviews illustrate their opposition to the assumption of the responsibilities of the facilitator, especially the position of deciding the outcome of the panel, by the police representative. This is expressed by victims in statements such as:

“No definitely not, the police should be there ... but really the chair [facilitator] should be separate....that’s important to the way this all works” [Interview-A016]

Similar attitudes are expressed in the statement:

“I think it’s better with the chair [facilitator] as it is, separate. I think everyone reacts better to it and I don’t think we’d gain anything from the police doing it...if anything you’d lose out as they [offenders] probably wouldn’t react the same to a copper doing all that...” [Interview-A021].

“The two [police and facilitator] really should be separate, I think anyway...its like in court, you wouldn’t get a policeman running that and here it’s the same thing really...it not really right to have them doing those things” [Interview-B002].

Thus, victims identified the presence of police officers during the Justice Panel as being important, in some cases crucially important, but they rejected the suggestion of utilising police officers as facilitators. Despite perceiving a police presence as essential, victims stated that they would not desire the police to fulfil the role of a facilitator, with responsibility in controlling the restorative justice process and, in this context deliberations regarding the outcome of the restorative meeting. These statements, in addition to data discussed previously, demonstrates a desire among victims for a more formal restorative

⁴⁰¹Schiff, M. and Bazemore, G. (2001). Exploring and shaping the future. In G. Bazemore, & M. Schiff, *Restorative community justice: Repairing harm and transforming communities* (pp. 333-347). Cincinnati, OH: Anderson Publishing Co.

justice process than that depicted within extant literature, with closer integration within the formal criminal justice process, discussed in greater detail within the following section.

The above quotations (Interview-A016, Interview-A021 and Interview-B002) clearly illustrate the extent to which victims perceive the roles fulfilled by the police and facilitator as being distinct and separate. Specifically the desire of victims that the facilitator assumes responsibility for deciding the outcome of the case and subsequently the contents of the acceptable behaviour contract (ABC), whilst relying upon a police presence to increase the authority of the process.

However, such distinction of the police and facilitator roles is flawed, as, following restorative justice literature,⁴⁰² the position of the facilitator is not to assume a central role in the decision making process but to facilitate such decision making between the victim and offender. It is only through those desires of victims to avail themselves of such responsibility that the facilitator assumes such a role. Regardless of this however, the rejection of the police representative as facilitators holds important implications for the implementation of restorative justice practices. Numerous restorative practices have been implemented and conducted by Police Constabularies.⁴⁰³ Those comments made by victims who rejected the suggestion that a member of the Police Constabulary could undertake the role of the facilitator appear to possess intrinsic opposition to the appropriateness of such a role. These normative objections to the assumption of such duties by a member of the police force are illustrated within comments such as:

⁴⁰²O'Connell, T., Wachtel, B. & Wachtel, T. (1999). *Conference Facilitator's Script. From Conferencing Handbook: The New Real Justice Training Manual*. Piper's Press.; O'Connell, T., Wachtel, B. & Wachtel, T. (1999). *Conferencing Handbook: The New Real Justice Training Manual* Pipersville, PA: The Piper's Press.; Wachtel, T. (1995). *Family Group Conferencing: Restorative Justice in Practice. Juvenile Justice Update*. 1(4), 1-2, 13-14.

⁴⁰³Strang, H. (2002). *Repair or revenge: Victims and restorative justice*. Oxford, UK: Oxford University Press.; Hoyle, C., Young, R. & Hill, R. (2002). *Proceed with caution: An evaluation of the Thames Valley Police initiative in restorative cautioning* York, UK: Joseph Rowntree Foundation.

“They should do separate things...one polices crime and the other deals with it afterwards...like the police and a magistrate...they don’t do the same thing and they should either...” [Interview-A007] and reiterated through:

“it’s important they are separate, people wouldn’t do this if it was just the police...well I can’t see them [offender] acting like that if it was a policeman doing it...they have an attitude towards the police and that shouldn’t be brought into stuff like this...”

[Interview-B003].

The current position of the police, as an important participant, providing authority to the process but without assuming a position of control appears to mimic their position within the traditional justice process and courts. Whilst the police may be present, and engaged with the process to the same extent as the victim they remain without the controlling powers that the facilitator possesses during the Community Justice Panel. Such concerns are asserted in statements including:

“There’s something not sitting well with that idea [police as facilitator] ... like they’d police the crime but then be in charge of its outcome... I don’t think having the two things together would be a good thing...” [Interview-A014].

This statement explicitly discusses the extent to which the police force, as the institution responsible for the detection and prevention of crime, should additionally operate within the disposal stage of the criminal justice system, determining the outcome of such restorative meetings and the necessary obligations the offender would be required to undertake.

Such concerns again, appear to focus upon the existing criminal justice process and in particular the operation of the criminal court, rather than accepting restorative justice, advocated as a distinct philosophy and practice,⁴⁰⁴ separate from those traditional criminal justice concerns such as due process rights and impartial judgement. Similar comments have

⁴⁰⁴Wenzel, M., Okimoto, T., Feather, N. & Platow, M. (2008). Retributive and restorative justice. *Law and Human Behaviour*. 32 (5), 375-389.

been directed as previous theoretical writings which criticise restorative justice methods as failing to protect the offenders' due process rights or incorporate sufficient rules of evidence.⁴⁰⁵ It would appear therefore, that those concerns relate to the victims depiction of the restorative justice process as an extension of the traditional criminal justice system, and its associated courtroom processes, in a similar manner to their overlay of courtroom imagery over the restorative process.⁴⁰⁶ The concerns regarding the police assuming the role of the facilitator appear to reflect similar concerns regarding the independence of the judiciary and would suggest that the perception held by victims of the facilitator's role is that of a judge within the criminal courts, with power to decide upon the severity of their sentence. Such a position however represents a dramatic departure from those assertions of theoretical literature suggesting the facilitator's position is merely to facilitate safe and productive discussion between the victim and offender in pursuit of a deliberative outcome agreed upon by all relevant parties.⁴⁰⁷

The existence and extent to which imagery of the traditional courtroom operates within victim experiences of the restorative process in which this research was conducted appears to extend beyond the mere comparisons of physical and procedural demarcation, but also to the roles fulfilled by those other participants. Victims appear to interpret the position occupied by the facilitator as that of a judge, with control over the formal procedure, and subsequently determining the outcome of the restorative meeting. However, those facilitators are regarded as lacking the requisite authority required for the restorative process, a role fulfilled through the essential presence of a uniformed member of the Police Constabulary. The Police are seen as being inappropriate for the facilitators' position, possibly a result of

⁴⁰⁵ FOR due process concerns see Ashworth, A. (2002). *Rights, Responsibilities and Restorative Justice.*; Von Hirsch, A. (1976). *Doing Justice: The Choice of Punishments.* New York, NY: Hill and Wang.

⁴⁰⁶ This overlay of court room imagery is revisited and developed further within the subsequent sections of this chapter.

⁴⁰⁷ Paterson, C.&Clamp, K. (2012).Exploring recent developments in restorative policing in England and Wales.*Criminology and Criminal Justice.* Published online before print April 12, 2012, doi: 10.1177/1748895812441933 .; Shapland, J., Sorsby, A.&Robinson, G. (2011). *Restorative justice in practice: Evaluating what works for victims and offenders.* Milton Park and New York: Routledge.

the impressions held by victim participants regarding the traditional criminal justice system. Victims' strong desires for a police presence within a restorative process, but their rejection of the same representative to undertake those duties of the facilitator, appears to reflect the position occupied by the police within the traditional justice process. This reliance upon traditional courtroom processes is further illustrated through the perceived role of the facilitator as an impartial third party, responsible for orchestrating and facilitating the process and deciding upon an appropriate outcome at its conclusion. It is suggested, and further developed within the following sections that the explicit separation of the role of facilitator and the police presence may once again result from the continued reliance of victims upon the imagery and principles of the traditional criminal justice system.

3. Formality

This section presents and discusses data collected throughout the qualitative interviews which relate to victim perceptions of formality within the restorative justice process. A central theme of restorative justice is the concept of informal justice.⁴⁰⁸ Progressing from similar arguments regarding stakeholder empowerment,⁴⁰⁹ theory suggests that through the formalisation of the justice process into an independent, professional service those primary stakeholders,⁴¹⁰ specifically victims and offenders have suffered, through their exclusion and peripheral status.⁴¹¹ A method of redressing this deficiency, through restorative justice practices lies in the removal of the formal governance of the justice process and the

⁴⁰⁸ Roche, D. (2003). *Accountability and Restorative Justice*. Oxford: Oxford University Press. Woolford, A. & Ratner, R. S (2010). Disrupting the informal-formal justice complex: on the transformative potential of civil mediation, restorative justice and reparations politics. *Contemporary Justice Review*. 13(1), 5-17.

⁴⁰⁹ Leonard, L. & Kenny, P. (2011). Measuring the effectiveness of restorative justice practices in the republic of Ireland through a Meta-Analysis of functionalist exchange. *The Prison Journal*. 91, 1, 57-80.

⁴¹⁰ Whyte, B. (2007). Restoring 'stakeholder' involvement in justice. In P. Richie, & S. Hunter (eds), *Co-production in Social Work*. Research Highlights. London: Jessica Kingsley

⁴¹¹ Goodey, J. (2005). *Victims and Victimology, Research, Policy and Practice*. London: Pearson.; Zedner, L. (2004). *Criminal Justice*. Oxford: Oxford University Press.; Hoyle, C. & Sanders, A., (2000). Police Response to Domestic Violence: From Victim Choice to Victim Empowerment. *British Journal of Criminology*. 40, 14-36.

delivery of deliberation and conclusion to those most affected by the initial offence. Direct participation is advocated as being beneficial for the alleviation of those concerns which are of central importance to the individuals directly affected by the offence.⁴¹² Moving from the well documented criticisms that the formal justice system repeatedly fails to address both the victim's and society's needs,⁴¹³ the formal and impersonal nature of the process is identified as a major contributor to re-victimisation.⁴¹⁴ Restorative theory alleges that through the more personal, less formal apparatus of restorative practices, it avoids and indeed rectifies the criticisms of the western model such as victim feelings of exclusion and irrelevance.⁴¹⁵ Again the benefits of this less formal model of justice are repeatedly discussed within both theoretical and empirical research.⁴¹⁶

i. Informality and Victim Experiences

Following analysis of interview data, the emergent theme of formality was identified within a majority of interviews across both case studies. The data suggests that, contrary to assertions within theoretical literature, victims engaging with this research do not desire informal conflict resolution, departing from the traditional justice processes. Conversely, it appears that greater formality is desired by victim participants, in addition to a desire for

⁴¹²O'Mahony, D.&Doak, J. (2004).Restorative Justice - Is More Better? The experience of police-led restorative cautioning pilots in Northern Ireland.*Howard Journal of Criminal Justice*.43(5), 484-505.; Robinson, G. and Shapland, J. (2008). Reducing Recidivism: a task for restorative justice? *British Journal of Criminology*, 48 (3), 337-358.

⁴¹³ Detailed within chapter II

⁴¹⁴Doerner, W. (2012).*Victimology*. Burlington, MA: Elseiver, Inc.; Campbell, R. &Raja S. (1999). Secondary victimization of rape victims: insights from mental health professionals who treat survivors of violence. *Violence Vict* .14 (3).

⁴¹⁵Bottoms, A. (2003).Some Sociological Reflections on Restorative Justice. In A. von Hirsch, et. al., (eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (pp. 79-114). Oxford and Portland, Orgeon: Hart Publishing.; Roche, D. (2003). *Restorative Justice and the Regulatory State in South African Townships* Justice Reflections: Worldwide papers linking Christian Ideas with Matters of Justice. Issue 3 (JR 13-20).

⁴¹⁶Olson, S.&Dzur, A. (2004).Revisiting Informal Justice: Restorative Justice and Democratic Professionalism*Law and Society Review*.38(1), 139-176.; Monaghan, R. (2008).Community-Based Justice in Northern Ireland and South Africa.*International Criminal Justice Review*.18(1), 83-105.; Morris, T.&Trammell, R. (2011).Formal and informal justice and punishment: Urban law and rural mediation rituals in Yemen.*Race and Justice*. 1(2), 131-153.

greater use of traditional court room imagery such as the physical demarcation of space, the application of court-like procedures and the roles performed by participating individuals. This data questions theorists' assumptions and central claims of restorative justice theory.⁴¹⁷

Such assertions are demonstrated through a significant majority of victim comments, across case study A and B, expressing some reservation regarding the atmosphere of the restorative meeting, claiming that:

“I was surprised at the Panel itself, it was too informal for what I was expecting...”

[Interview-B014]:

“I would have preferred the Panel to be more court like and less of a conversation...”

[Interview-B008].

Furthermore, the location of the restorative meeting was identified by numerous victims as have significant impact upon the perception of the process as being formal or informal, with some stating that a more formal location would be more appropriate:

“I would have preferred it to have been at the police station if I'm honest, to give it that bit more seriousness, a bit more formal like if you were taken down the police route...”

[Interview-A005].

The above quotation (Interview-A005) clearly identifies the location of the interview as contributing to the perceived formality of the process. This respondent, in previous quotations has identified a police presence as necessary to convey authority to the restorative meeting, however, they rejected the suggestion that the police should assume control of the entire process. Conversely, a smaller number of participants expressed conflicting views regarding the restorative justice meeting, describing the process as being formal, with

⁴¹⁷ Christie, N. (1977). *Conflicts as Property*.; Zehr, H. (1995). *Changing Lenses*.; Dorne, C. (2008). *Restorative Justice in the United States*. New jersey, USA: Pearson.

formality being a significant factor in their assessment of the process. This is reflected in comments made by two victims:

“I thought it was good, like a court, all formal and that ... it made them realise it was serious when they came in and saw everyone sitting there” [Interview-A028]:

“I think it had the right impression ... like it was set out formal, with everyone told where to sit and everything...a bit like a court and that made them [offender] take notice.” [Interview-A015].

The majority of data collected across both case study locations, suggested that victims were less willing to depart from the formality traditionally associated with the criminal justice system, expressing negative views regarding the informality of the restorative practice in which they engaged. This is reflected more prominently within victim statements from case study B, with a greater proportion expressing negative perceptions towards informality, however as case study B involved a smaller sample such comments are fewer in number than those within case study A. Such comments included:

“I think it should have been far more serious with more structure, to remind everyone that it’s a serious matter...” [Interview-B004]:

“It should really be more formal, I didn’t like the feeling it gave – that is was too much like a social meeting or something ... we’re there for a reason after all”. [Interview -B009].

Victims who valued the restorative justice process appeared to focus upon its similarity to a court room process, and the formality it conveyed, rather than the informality of the discursive process. Such comments suggest that victim participants perceive informal mechanisms of justice as being of less seriousness than a formal alternative, with the implication that the relevant offence is similarly being addressed as being less serious. This intrinsic lack of formality and the implications of its appropriateness with which some

victims perceive informal dispute resolution persist, despite both methods offering consistent outcomes, reflected in statements such as:

“I didn’t really like the process if I’m honest, it was all a bit too much like we were all friends if you know what I mean...I’m glad he got fined for the damage and that he’ll [offender] have to do that community punishment in the park ...whatever they get him to do, picking litter or whatever ... it was good because that’s the sort of thing he deserved and would have got in court.” [Interview-B009].

“I would have preferred going to court...this was all a bit of a joke...sitting around like we are in youth club or something, I’m not happy about it...I wanted something proper...serious, not the outcome (community work and repair) as that’s fine, but how we got to it.” [Interview-A003].

Such comments suggest that the informal nature of the process is tolerated due to the victims’ desire for specific outcomes, or a lack of alternatives (discussed in detail within chapter 3). Nevertheless, it is suggested that the informal manner in which the restorative justice process is conducted continues to impact upon victim assessments of the process. Furthermore, the negative reception of the informal nature of the restorative justice process is present in a significant majority of interviews, across both case study locations, with 74% of victim participants across both case study locations explicitly identifying and expressing some reservation regarding the informality of the process, or some desire for greater formality in such practices.

ii. The Imagery of the Courtroom

In addition to assertions regarding the informal nature of the restorative justice process (detailed above), victims expressed specific reservations regarding the physical layout of the restorative meeting, the procedures followed when conducting the panel and the

roles of those other participants. Furthermore, victims regularly made comparisons with the more formal, traditional justice system, specifically comparing the restorative justice process to criminal courts. Such beliefs are reflected in victim comments such as:

“I was expecting something more like a court to be honest; I would have preferred that, so everyone knows why we’re there, it’s easy to forget in those chatty meetings...” [Interview-B011].

Specifically, victim discussion regarding the informality of the restorative process and their dissatisfaction with the lack of formality repeatedly utilised the formal court process as either a direct example of preferable conduct or implicitly referred to aspects of the process which would exist as a regular feature of the formal court system. For example numerous victims repeatedly stated that:

“If it was more formal and Court-like it would be better, perhaps with the chair [facilitator] behind a desk or with a more formal approach when talking with us...” [Interview-B009].

This directly references the traditional court process as being preferable, supported by the statement:

“I didn’t like how we were seated, all together – it was really too friendly, you’re not like that in court, everybody is separate and knows their place, you’re told where to sit and what to do...I’d have rather had that than the circle which we used...” [Interview-A016].

Such statements appear to emphasise the separation of offenders from other participants during court proceedings. Those comments made by victim participants relating to the theme of formality and their reliance upon the formal justice system are further categorized into sub-themes, relating firstly to physical elements of formality and the justice system and secondly the procedural aspects of the court process, which are discussed further below.

iii. Physical and Procedural Imagery

The physical layout of the restorative meeting complied with restorative justice theory, upon which practices such as Family Group Conferencing are based.⁴¹⁸ The absence of any physical obstacles or physical barriers between the victim and offender such as tables or partitions, in addition to implementing uniform seating, in a circular arrangement, serves to remove the separation and subsequent labelling of the victim and offender, state and individual, controller and the controlled which is clearly seen throughout the Court process.⁴¹⁹ This departure from traditional mechanisms of justice is identified by some restorative theorists as being central to its underlying philosophy, departing from the enforcement of roles leading to stigmatisation and labelling, and retrospective judgement to a more restorative focus upon future actions and prospective resolution.⁴²⁰ Similarly the removal of physical obstacles between participants is depicted as an important element within the restorative process.⁴²¹

Within this research however, the informal setting of the restorative process employed was often received negatively by victims.⁴²² Throughout the semi-structured interviews, when identifying the informality and its poor reception by victims the respondents would commonly refer to the physical arrangement of the panel. Victims explicitly identified the informal, circular arrangement of the Panel as a source of disaffection. They criticised the arrangement of the Justice Panel, describing both its appearance and intentions in a negative manner, demonstrated within comments including:-

⁴¹⁸Raye, B. &Roberts, A. (2007). Restorative Processes. In G. Johnstone and D. Van Ness (eds.), *Handbook of Restorative Justice* (pp. 211-227). Cullompton: Willan.

⁴¹⁹Goldere, B., &Fitzpartrick, P. (2009). *Foucault's law*. Routledge-Cavendish: London.

⁴²⁰McLaughlin, E., Fergusson, R., Hughes, G., & Westmarland, L. (2003). *Restorative Justice: Critical Issues* London, UK and Thousand Oaks, CA: Sage Publications in association with The Open University. Becker, H. (1963). (reprint 1997) *Outsiders*, New York, NY: Free Press.; Nathanson, D. (1988). *The Many Faces of Shame*. USA: Guilford Press.

⁴²¹Umbreti, M. (2001). *The Handbook of Victim Offender Mediation, An Essential Guide to Practice and Research*. San Francisco, CA: Josey Bass.

⁴²² For detailed explanation of the specific restorative justice practice and methods upon which this research was focussed see Chapter II, Section 4.

“I didn’t like the way it was all set up – with everyone sat in a circle...it was like we were all in school or something, it wasn’t appropriate” [Interview-A003]

“I would have preferred a table or something that we could sit around... I didn’t appreciate the circle set up we had to use, it really was too informal ... and probably a bit uncomfortable to face them like that...” [Interview-A007].

This criticism appears predicated upon a normative judgement against informal conflict resolution. Such data suggests that, despite assertions within both restorative justice literature and abolitionist literature,⁴²³ the participants in this research did not react positively to such a departure from the formal mechanisms of the criminal justice system. Additionally victims criticised the appearance of the justice panel not only due to perceiving the process as immature and juvenile, but also due to the connotations that all members of the Panel are equal. Numerous victims explicitly rejected this notion, stating the reason for the Panel was due to the offenders’ actions and they appeared to desire vindication of this during the restorative process. This desire or need for formal recognition or vindication of the harm caused by the offender and their status as a deviant⁴²⁴ is reflected in numerous comments such as:-

“It should have been more like an actual ‘justice panel’ with us, the victims sat in one part, the offender away on their own and the panel, like the facilitator and others at the front, more formally...maybe even raised up....” [Interview-A005].

“It just seemed far too Sunday school....as if we were all kids....I think it would have been better if it had been more formal and had a bit more authority, so you are told the

⁴²³Knopp, F. (1991). Community Solutions to Sexual Violence: Feminist/Abolitionist Perspectives In R. Quinney & H. Pepinsky (eds.), *Criminology as Peacemaking* (pp. 181-193). Bloomington, IN: Indiana University Press.; Ruggiero, V. (2011). An abolitionist view of restorative justice. *International Journal of Law, Crime and Justice* 39 (2), 100–110.

⁴²⁴Becker, H. (1963). *Outsiders: Studies in the Sociology of Deviance*. New York: The Free Press.; Matsueda, R. (1992). Reflected Appraisals, Parental Labelling and Delinquency. *American Journal of Sociology*. 97, 1577-611.; Meossi, D. (2000). Changing Representations of the Criminal. *British Journal of Criminology*. 40, 296.; Mead, G. (1934). *Mind, Self, and Society*. Chicago: University of Chicago Press

time and date, rather than them asking you when you can come, and then it could look more like a ‘proper court’...that would be better I think” [Interview-B011].

This rejection or criticism of the physical arrangement of the process appears inconsistent with theoretical literature which asserts the benefits of informal justice and its ability to satisfy those needs of victims. Furthermore, such a rejection questions the informal arrangements, specifically selected by the IIRP as ‘best practice’ in restorative justice implementation.⁴²⁵ If the desires and requirements of victims appear incapable of fulfilment through an informal process it questions the extent to which extant work, both theoretical and empirical depict an accurate picture of victim commitment to restorative practices. Furthermore, the above quotation [Interview-B011] additionally incorporates an explicit reference to the traditional criminal justice process which occurs within a Courtroom. The reference to being a ‘proper court’ alludes to central theme within this chapter, the overlay of courtroom imagery over the restorative justice process and a desire for the latter to conform more fully to the principles of the former.

Such a rejection, or erroneous understanding, of restorative processes and values may therefore illustrate the persistent lack of comprehension which victims appear to suffer when engaging in restorative practices. This lack of understanding is reflected in statements such as:

“I didn’t know what it was going to be like ... I assumed it would be like a court, you know where everything is done for you sort of...and you’re told when to speak and that kind of thing...” [Interview-A024].

This reliance upon the more formal, traditional methods of criminal justice, focussing upon the procedures undertaken rather than the physical settings of the restorative process is further demonstrated in comments including:

⁴²⁵O’Connell, T., Wachtel, B., &Wachtel, T. (1999).*Conferencing Handbook.*

“Yes, I would have expected like when offences to be read out in as it would court, that on this day you did this which gave such a severe injury it may have caused brain damage” [Interview-A005]

“I thought it would be more court-like, and that would have been better I think, with the chairman [facilitator] sat at the front with the police, then you sat on one side and the offender sat on the other....it just would help it looks a bit better more...professional maybe....” [Interview-B007].

Furthermore, this repeated reference to those more familiar traditional criminal justice processes appears to support those theoretical assertions of Mead and Durkheim, reiterated by Bussmann, that the justice system fulfils an additional, symbolic role precipitating feelings of social security, identity and justice.⁴²⁶ Research findings of this thesis suggest that victims repeated reference to the purpose of the meeting, as a reaction to a criminal offence, alludes to its perceived communicative and symbolic role, conveying censure of the criminal action.⁴²⁷ The role such criminal justice disposals fulfil, through the censure of crimes is demonstrated throughout victim comments, despite their lack of awareness when making such statements. Within the qualitative interviews victims, when expressing their reservations regarding the atmosphere of the restorative process and its informality make repeated references to the expressive task of censure undertaken by the justice system. This is reflected in comments including:

“I expected there to be a bit more....what I would call direction, so like a magistrates where you get told what you did, that it was wrong and why it was wrong...then what you need to do to make it right....” [Interview-A005];

⁴²⁶ Mead, G. H. (1934). *Mind, Self, and Society*. Chicago: University of Chicago Press.; Durkheim, E. (1964). *The division of labor in society* (G. Simpson, Trans.). Glencoe, IL: The Free Press (Original work published 1902).; Bussmann, K. (1991). Morality, Symbolism and Criminal Law: Chances and Limits of Mediation programs. In H. Messmer & H. Otto (eds.), *Restorative Justice on Trial; Pitfalls and Potentials of Victim-Offender Mediation – International Perspectives*. London: Kluwer Academic Publishers.

⁴²⁷ Von Hirsch, A. (1993). *Censure and Sanctions* (Oxford Monographs on Criminal Law & Justice), Oxford: Oxford University Press.; Duff, A. (2000). *Punishment, Communication, and Community*, Oxford: Oxford University Press.

“...really they[offender] need to be told that what they did was wrong, and not just make them say it themselves but to have it said to them, officially like....so they know that it was wrong...” [Interview -B009].

It would therefore appear that for victims participating in this research, criminal law in this context occupies a functional dualism encompassing a social reaction to a crime in recognising the violation of a social norm in addition to recognising the harm inflicted upon the individual.⁴²⁸ Despite not explicitly recognising this role of the criminal law and the traditional court process, victim participants in this research appear to perceive restorative practices as being incapable or unwilling to fulfil a similar communicative role. Following this it is suggested that it may be unrealistic to view restorative justice as a true alternative to criminal law as, from this research it would appear incapable of symbolising those essential social norms in the same manner as the formal justice system.⁴²⁹ This communicative role which the traditional criminal justice process fulfils appears to be of significant importance to victims of crime. The above quotations demonstrate a desire for the offender to be clearly identified as a transgressor, either through their physical isolation and separation from other participants, or through the opportunities accorded to them for engaging with the process. It remains unclear the extent to which restorative practices can incorporate those communicative elements desired by victims, as a departure from ‘labelling’ and the judgement of the offender (consequences of such identification) are often described as being central to restorative justice philosophy.⁴³⁰

It would appear that those deliberate attempts to decrease formal aspects of the process through the removal of physical obstacles and court room imagery resulted in victims’ subsequent dissatisfaction. When discussing the physical arrangement of the Justice

⁴²⁸Busmann, K. (1991). *Morality, Symbolism and Criminal Law*.

⁴²⁹ ibid

⁴³⁰McLaughlin, E., Fergusson, R., Hughes, G., & Westmarland, L. (2003). *Restorative Justice: Critical Issues* London, UK and Thousand Oaks, CA: Sage Publications in association with The Open University.; Cornwell, D. (2006) *Criminal Punishment and Restorative Justice, Past, Present and Future Perspectives*. Winchester: Waterside Press.

panel, participants often referred directly to court room situations, indicating a desire for an experience which was more similar to the traditional court based process. Indeed, some victims made specific suggestions regarding what they viewed as improvements to the restorative process which correlated directly with the physical orientation of a traditional Criminal Court. Their comments described the formal apparatus and clear separation of victim and offender in addition to the representations of power conveyed through the elevation of court room officers:-

“The facilitator could be higher up, to show they are in charge, or at least at the front...maybe behind a desk or something...” [Interview-A005];

“They [offender] really should be away from the rest ... I don’t mean the other side of the room, but there should be something to show the difference between the offender and the victim...” [Interview-B008];

“I didn’t like the informal feeling that the Panel had ... I think maybe with a young victim it would be better so they don’t get so afraid, but when it’s an adult I think it’s a bit silly ... a bit demeaning. Everyone should have their own position, showing what they are there for, the victim, the offender and the facilitator with the police – like they all sit in court in different places” [Interview-A027].

Comments from one victim in favour of the format and arrangement of the Justice Panel focussed on their perception of the formal image which it conveyed:

“I was quite impressed with that last night, with the policeman being there, the duty officer, the parents looking at you and the kids looking at you the facilitator, it looks official and it felt official and where it was too.” [Interview-A008].

Within those comments made by victims who criticised the arrangement of the panel due to its informality and its related implications regarding equality of participants, the physical arrangement and consequent use of space throughout the process was often discussed. Victims regularly expressed a desire for greater separation from the offender,

facilitator and police officers, through the physical arrangement of the room. It appears that victims desired separation such as that within a court room layout, with clear demarcations of space to reflect the different roles of each individual. The comments made by victim participants regarding the allocation of space echo the comments made by Carlen in her work regarding the drama of a court room, with her discussion of space as a method of control appearing to be particularly pertinent to this research.⁴³¹ If the display and separation of individuals within court is a method of control,⁴³² this rejection of the informal, parity of participants in favour of more traditional demarcation of space suggests a rejection by victims of another key aspect of restorative theory, the removal of labels such as ‘offender’ or ‘deviant’ and a focus upon the harmful action and its redress. The desire of victims for segregation of the offender and those (traditional) agents of power within the process such as the facilitator, police and ultimately the victim themselves, does not appear commensurate to the objective of attaining redress for the harmful actions whilst avoiding the “potentially harmful effects of stigmatisation and labelling through the traditional court process.”⁴³³ This desire for demarcation as a method of reinforcing the roles which each individual would occupy within a traditional court based criminal trial appears to either ignore or reject the central premises’ of restorative theory that such practices, of stigmatisation, labelling and a professional court should be avoided.⁴³⁴ Again the emphasis upon the traditional method of conflict resolution and those formal mechanisms of the criminal justice system suggests either significant misconceptions regarding restorative justice theory, or a rejection of the theory in favour of traditional methods.

⁴³¹ Carlen, P. (1976). The Staging of the Magistrates Justice. *British Journal of Criminology*. 16 (1), 48-55.

⁴³² Foucault, M. (1975). *Discipline and Punish*.; Durkheim, E. (1964). *The division of labour in society*

⁴³³ Braithwaite, J. (1989). *Crime, Shame and Re-integration*

⁴³⁴ Ibid.; Strang, H. (1999). Recent research on conferencing: The Canberra experiments. In A. Morris & G. Maxwell (eds.), *Youth Justice in Focus: Proceedings of an Australasian Conference held 27–30 October 1998*, Institute of Criminology, Victoria University of Wellington, Wellington.; Daly, K. (2000). Revisiting the relationship between retributive and restorative justice. In J. Braithwaite & H. Strang (eds.), *Restorative Justice: From Philosophy to Practice*, Dartmouth, Aldershot, England.

Such a desire for formality in the process and reference to the demarcation of space and subsequent separation of the victim and offender is further reflected in comments such as;

“...it may be better with a table, because we didn’t have a table, we just sat with chair very closely in a circle, I just feel that if we had a table between you ... you might feel better, not quite so cosy chat in a circle, it would make it more formal” [Interview-B009];

The victim’s desire for this demarcation, similar to that within the court process, is further illustrated, more explicitly, through statements such as;

“Well in court you all sit separate don’t you ... so I think that should be more clear in the Panel, who’s who and who’s done the crime, who’s the victim ... that sort of thing. I don’t know how you could do that with the place of the Panel though, like community centres...maybe use tables or something, or a different building ...” [Interview-B003].

Victims expressed further concerns regarding the manner in which individuals engaged with the restorative process. Again, contributing to the emergent theme of courtroom imagery and procedure, victims appeared unhappy about the equality with which each individual participated during the restorative meeting. This is demonstrated through statements referring to the offender, including:

“I didn’t like the way we were all the same during it [justice panel] ... when we all said the same amount and got the same questions ... it didn’t really show who was the criminal and who was the victim...” [Interview-B007].

These comments reiterate the previous points made in reference to the demarcation of space and the clear identification of the offender. It appears that in addition to those desires for physical separation of the offender from the other participants, victim respondents also desire that such a distinction is reinforced through (limiting) offender interaction during the

restorative meeting, such as opportunities to speak, the focus of discussion upon the offence and to an extent verbal judgement of the offence as a clear transgression. This suggests that the physical aspects of the restorative justice process (and subsequent demarcation of space) and the procedural aspects relating to the manner in which the restorative meeting is conducted are related. Whilst some victims explicitly discuss each aspect separately, the majority of victims interviewed conflated the two issues and often discuss the informality of the process without recourse to its manifestation. It is suggested that this conflation reflects the intrinsic nature of the relationship, that both physical demarcation and procedural formality contribute to victim perceptions of formality, and that both are desired by victims participating in this implementation of restorative justice.

Despite restorative justice theory asserting that all are equal, it would appear that victims are unwilling or incapable of adopting such an egalitarian perspective regarding criminal justice processes, demonstrated through their attempts to preserve the communicative role of the traditional justice system of censure and judgement. The data strongly suggests that victim's desire that the distinction between themselves and the offender is clear and unambiguous, reflected and reiterated within the environment of the justice panel and the offender's physical location. Furthermore, this rejection of the informality of the restorative process itself would suggest that if the process was conducted within a court room to rectify those criticisms regarding the demarcation of space, such dissatisfaction may persist, as the process itself is identified by several victims as being too informal and inadequate for its perceived, communicative purpose.

It would appear therefore that victim's desires and their efforts to overlay their perceptions of the formal mechanisms of the criminal justice process, particularly courtroom interaction, over their experiences of restorative practices, suggest either a lack of understanding or explicit rejection. This is reflected in their comments regarding both the decision making role occupied by the facilitator (against the central feature of restorative justice) in addition to the

desire for the mimesis of court room trials by the restorative justice practice, through the allocation and arrangement of space and furniture. This may represent victims attempting to reduce the unfamiliar and misunderstood concept of restorative theory and practice to more familiar concepts of the formal criminal justice processes.

iii. Uniformed Police and the Visibility of Justice

Whilst the demarcation of space and the procedural imagery of the justice system is desired by victims within the restorative justice processes, it would appear that the presence of the police, in uniform, may operate as a visible reminder of its relationship with the criminal justice system. It is significant to note that within all interviews in which victims identified the police as being an important element within the process, those police attended the meeting in full uniform (whether a PC, PCSO or Special Constable). The comments of victims during those interviews should therefore be understood in the context of the clear and prominent presence of uniformed officers throughout the restorative meeting. It is not known whether the concept of authority and its relevance to police attendance would be as prominent within victim responses if the officers attended in civilian clothing. However, the presence of a uniformed member of the police constabulary did facilitate a strong reaction from participating victims. This is reflected in comments made regarding the image portrayed by a uniformed member of the police constabulary:

“having a policeman there was definitely a good thing ... I think it’s needed because they’re obvious, in their uniforms and it gives the offender something to focus on ... that it’s a serious matter which could have gone to court ...” [Interview-A011].

“In uniform its clear... you know it’s a serious matter and that it’s being dealt with seriously” [Interview-B005].

The presence of a uniformed member of the police force, and the subsequent importance which victims accorded to their attendance may arise from their contributions to

the identification of the restorative process as a formal aspect of the criminal justice system. This visible reminder of the traditional justice system may offer some explanation into the repeated emphasis upon the police presence, as victims repeatedly state that they perceive the restorative process as existing within the criminal justice system, reflected through their comments regarding the physical demarcation of space and resulting courtroom imagery employed throughout their discussions.

“Well if this is supposed to be a justice panel... and it’s part of the justice system I think it should look like it is...with the police and everything else...” [Interview-A022].

The prominence of discussion which focuses upon the presence of a uniformed police officer may therefore, become exacerbated as a result of the lack of other visible reminders of the traditional justice system, due to the removal of physical obstacles providing demarcation of space and the departure from the traditional courtroom approaches. In absence of that clear imagery, victims may focus upon the presence of a visible, uniformed representative of the criminal justice system as a method of fulfilling, to some extent, those desires for demarcation and formal procedure which are not delivered during the restorative justice process. The visible reminder of the traditional criminal justice system which is provided by the presence of a uniformed police officer may be valued by victims as it clearly anchors the restorative process within the criminal justice system. This desire to perceive the restorative process as a valid aspect of the justice system is reflected through those previously discussed themes of formality, the demarcation of space, process and function and is demonstrated through assertions made by victims throughout the qualitative interviews:

“If the justice panel is going to be there instead of a court then it needs everything that the court has...otherwise it’s not going to have any impact.... it needs the police, but it also needs more seriousness, formality and stuff...” [Interview-A005].

This enduring desire for greater correlation with the traditional courtroom approaches to criminal events appears inconsistent to the central features of restorative justice philosophy which emphasise its departure from those formal, traditional methods of conflict resolution.⁴³⁵ However, it could equally represent attempts made by those participating victims to greater understand the process in which they are engaging, through reference to a more familiar, traditional criminal justice process. As demonstrated within the previous chapter, victim participants of this research participated in restorative practices with limited understanding of restorative theory and practice.⁴³⁶ Such an attempt, to comprehend restorative justice mechanisms through the overlay of retributive criminal justice apparatus may result from the inability of the facilitator to fully educate the participant over restorative principles and philosophy (discussed within the preceding chapter), which may in turn result from the latent ambiguity of the concept clearly established previously within this thesis.

Victim attitudes towards the facilitator, the use of space within the Community Justice Panel and the presence of the police appear to contribute to a unifying desire for the mimesis of the traditional criminal justice system within the restorative justice process. Victims appear to value those aspects of the restorative justice process which mimic the machinery of the traditional criminal justice system which suggests that throughout their participation victims attempt to impose traditional aspects of the criminal justice system over the unfamiliar restorative practice. Furthermore, a focus upon formality, authority and demarcation of space and procedure suggests a desire within victim participants of aspects of the traditional justice system not readily associated with restorative justice theory. Whilst not rejecting the concept of restorative justice (demonstrated through their engagement in the process) victims appear to select aspects of the theory to embrace, whilst rejecting other, (in some cases central

⁴³⁵ Alder, C. & Wundersitz, J. (eds.) (1994). *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism?* Australian Institute of Criminology, Canberra.; Palk, G., Hayes, H. & Prenzler, T. (1998). Restorative justice and community conferencing: Summary of findings from a pilot study. *Current Issues in Criminal Justice*. 10 (2), 138–55.

⁴³⁶ Chapter III, Section 2, ii.

features) of theory and practice in favour of aspects more readily associated with traditional western justice and punitive retributive theory.

4. Responsibility

This section again discusses existing literature alongside original empirical data. It suggests that, contrary to assertions within theoretical literature,⁴³⁷ victim participants do not desire a decision making role within the process, and attempts to convey such a role are received negatively. Progressing from the previous section, the concept of formality and reliance upon traditional courtroom processes continues through an apparent reluctance of victims to assume responsibility for outcome deliberation within the restorative process. This section questions the central assumption of restorative theory that participants are empowered through stakeholder ‘ownership’.⁴³⁸ Throughout this research, victim participants repeatedly asserted that they preferred the facilitator to assume responsibility for decision making during the process, but interestingly rejected the notion of a police officer fulfilling this task, again separating the two roles in a similar manner to that discussed above. In contrast to theoretical assertions,⁴³⁹ data collected during this research indicates that victims do not desire a position of decision making responsibility during the restorative process, reiterating the results of a small number of previous empirical studies.⁴⁴⁰ The section proceeds to discuss the

⁴³⁷ Detailed within Chapter 1, Section 4, i.

⁴³⁸ Christie, N. (1977). Conflicts as Property.; Weaver, B. (2011). Co-producing community justice: The transformative potential of personalisation for penal sanctions. *British Journal of Social Work*. 41(6), 1038-1057.; Doolin, K. (2010). Empowering communities through restorative justice. In K. Doolin, et. al (eds.), *Whose criminal justice? State or community?* (pp. 143-157). Hook, Hampshire: Waterside Press.; Schiff, M. (2007). Satisfying the needs and interests of stakeholders. In G. Johnstone & D. W. Van Ness, (eds.), *Handbook of Restorative Justice* (pp. 228-246). Cullompton, Devon: Willan Publishing.

⁴³⁹ Karp, D. (2002). The offender/community encounter: Stakeholder involvement in the Vermont Community Reparative Boards. In D. Karp, & Clear, T. *What is community justice? Case studies of restorative justice and community supervision* (pp. 61-86). Thousand Oaks, CA: Sage Publications.; Bazemore, G. (1998). A Vision for Community Juvenile Justice. *Juvenile and Family Court Journal*. 49(4), 55-87.

⁴⁴⁰ Kilchling, M. (1991). Interests of the victim and public prosecution. In G. Kaiser, H. Kury, & H-J. Albrecht (Eds.), *Victims and criminal justice*. Max Planck Institute for Foreign and International Penal Law, 52(1), 30-

extent to which victim participants actively avoided the assumption of such a role, describing the facilitator as being more appropriate for fulfilling the task and recording negative experiences when the imposition of such responsibility was attempted. Finally, it suggests that victims participating in restorative practices desire the provision of service rights over procedural responsibilities.⁴⁴¹

i. Stakeholder ownership

Stakeholder ownership exists as a fundamental claim within restorative literature.⁴⁴² As stated throughout this thesis,⁴⁴³ restorative justice theory asserts that victims have suffered detrimentally following the assumption of conflict resolution by the state within the traditional western approach to criminal justice.⁴⁴⁴ Such claims,⁴⁴⁵ allege that the dejection and disappointment often experienced by victims of crime following the disposal of the offence can be rectified through the provision of a deliberative, decision making role.⁴⁴⁶ Restorative justice is depicted as the most appropriate mechanism for the delivery of this conflict back to the possession of victims and that in doing so those criticisms of the victim's position,⁴⁴⁷ within the criminal justice system, are rectified.⁴⁴⁸

The concept of victim responsibility was prominent within the qualitative interviews conducted throughout this research. Within multiple interviews victim participants discussed

65.; Shapland, J., Wilmore, J., & Duff, P. (1985). *Victims in the criminal justice system*. Aldershot, Eng.: Gower Publishing Company.

⁴⁴¹ Ashworth, A. (2003). Is Restorative Justice the Way Forward for Criminal Justice. In E. McLaughlin, R. Fergusson, G. Hughes & L. Westmarland (Eds.), *Restorative Justice: Critical Issues*. London, United Kingdom: SAGE.; Ashworth, A. (2010). Rights, Responsibilities and Restorative Justice. In C. Hoyle (Ed.), *Restorative justice : critical concepts in criminology* (Vol. 4, pp. 20-40). London, United Kingdom: Routledge.

⁴⁴² Christie, N. (1977). Conflicts as Property.; Zehr, H. (1990). *Changing Lenses*.

⁴⁴³ See discussion within Chapter I, Section 4.

⁴⁴⁴ Crawford, A. and J. Goodey (eds) (2000). *Integrating a Victim Perspective within Criminal Justice*. Aldershot: Dartmouth.; Shapland, J., Dignan, J., Robinson, G., Atkinson, A., Colledge, E., Howes, M., Johnstone, J., Sorsby, A. and Atkinson, H., (2006). *Situating Restorative Justice within Criminal Justice*. Theoretical Criminology. 10 (4), 505-532.; Newburn, T. *The Needs of Victims*, Home Office.

⁴⁴⁵ Christie, N., (1977). Conflicts as Property.; Zehr, H., (1985). *Changing Lenses*.

⁴⁴⁶ *ibid*

⁴⁴⁷ Goodey, J. (2004). *Victims and Victimology: Research, Policy and Practice*. Essex: Pearson.

⁴⁴⁸ Leonard, L., & Kenney, P., (2011). Measuring the effectiveness of restorative justice practices in the republic of Ireland through a meta-analysis of functionalist exchange. *The Prison Journal*. 91 (1), 57-80.

the role of the facilitator within the community justice panels, decisions regarding the final outcome of the panel or 'Acceptable Behaviour Contract' (ABC) and attempts to elicit victim's assumption of a decision making role. Data generated throughout this research appears to contradict central features of both restorative justice theory and the majority of previous research, although similar findings are present within a limited number of empirical research projects.⁴⁴⁹ This is illustrated within victim statements including:

"...no I didn't want to decide the outcome myself ...it was much better the facilitator did..." [Interview-A029].

The data generated during this research appears to support assertions within extant literature which emphasise the importance of the facilitators role in both preparations prior to the restorative process in addition to their role throughout the process itself. Victims appear to recognise that the position of the facilitator, and their competency in the role as being extremely important and central to the success of the restorative panel.⁴⁵⁰ This is supported within the empirical data of this research through statements including:-

"The guy who was running it, I forget his name now...he done it really well, like a school teacher and he made them listen and learn and they did and by the end of it they were all listening, he was nice and sharp which is good and straight to the point." [Interview-B011];

"The person in charge of my case was very good ... it really felt that my needs were being addressed and that they cared. If I hadn't felt so comfortable about them [facilitator] I'm not sure that I would have taken part in the end..." [Interview-A016].

⁴⁴⁹Trankle, S. (2007). In the shadow of penal law: Victim-offender mediation in Germany and France, *Punishment and Society*. 9(4).

⁴⁵⁰Bazemore, G., & Griffiths, C. (2003). Conferences, Circles, Boards and Mediations: The New Wave of community Decision Making. In R. McLaughlin, G. Hughes & L. Westmarland (eds.), *Restorative Justice Critical Issues*. Thousand Oaks: Sage, (pp.76-93).; Umbreit, M.S., & S. Stacey. (1996). Family Group Conferencing Comes to the U.S.: A Comparison with Victim-Offender Mediation. *Juvenile and Family Court Journal*. 47(2), 29-38.

However, despite these positive assessments of the facilitator during the restorative justice meeting, the same interview data clearly demonstrates a negative reaction to any attempt by the facilitator to confer a position of decision making responsibility upon the victim participants. Those same participants stated:

“I’m glad the chairman decided what was agreed to at the end, I mean he listened to what I wanted but he made the decision about what they [offender] would have to do. I wouldn’t have wanted to do that myself” [Interview-B011];

“I don’t think I wanted to make that decision, I don’t know what I could ask them [offender] to do, but the facilitator does so it’s better they make the decision...” [Interview-A016].

However, whilst some victims expressed their desire against assuming a decision making role due to their self-perception that they would be incapable of such deliberations, this may more accurately indicate a reluctance to assume a lead role within the restorative process, justified through claims relating to their lack of knowledge, experience or ability. The concerns regarding the limited knowledge which victims possessed is indicated in statements such as:

“...I didn’t really know what to expect from the process at all, like what I could say or how they [offender] would behave...” and “it was all new to me so I had no idea what was going to happen ... I didn’t know where to sit, how to act, what to say I really just wasn’t sure....” [Interview-A014].

Such concerns increased in prominence when the responsibility for deciding the outcome of the panel was discussed:

“...what I would be able to say...that was a real problem for me as I didn’t know what was OK or not, I didn’t know if I was supposed to be angry or not...” [Interview-A012];

“I had nothing in my mind about what to ask them [offender] because I didn’t know if I would be able to ask what I wanted to, their background and whether they have done

this before....I thought it wouldn't be 'proper' to ask those questions, but I'm not sure what else I could have asked either if I'm honest...." [Interview-B009].

Whilst these initial comments appear to depict reluctance by victims to assume a decision making role due to their inexperience or lack of knowledge regarding the restorative process, further statements clearly demonstrated that, for some victims, they possessed normative objections to their assumption of a decision making role.⁴⁵¹ This is significant as whilst restorative justice is claimed to possess numerous symbolic, material, therapeutic and moral outcomes,⁴⁵² there is no clear theoretical account as to how or why restorative justice should benefit victims.⁴⁵³ However, many theoretical claims focus upon the communicative potential of restorative justice. Such assertions appear to be predicated upon the assumption that participants of restorative justice processes are capable of fulfilling this communicative potential and that they are willing to engage in such interaction. The above quotations appear to question the extent to which this is possible, with many victim participants stating that, despite their extensive preparatory meetings with the restorative justice panel facilitator, they remained unsure or unaware of what they were able to say to the offender and what they could ask of them.

ii. **'Stolen Conflict' and the role of the Facilitator**

As illustrated in the previous section, victims repeatedly emphasised the importance of the facilitator in not only preparing them for the restorative process or running a successful restorative panel, but also their input and assistance in determining an appropriate outcome.

⁴⁵¹ Such opposition to victims assuming decision making positions is demonstrated within past studies including Tränkle, S. (2007). In the shadow of penal law: Victim offender mediation in Germany and France. *Punishment & Society*. 9(4), 395-415.

⁴⁵² Daly, K. & J. Stubbs (2006). Feminist engagement with restorative justice. *Theoretical Criminology*. 10(1), 9-28.

⁴⁵³ Simon Green, (2007). Crime, Victimisation and Vulnerability. In S. Walklate (ed.), *Handbook of Victims and Victimology* (pp. 91-118). Cullompton: Willan.

Whilst theoretical literature emphasises the role of the stakeholders in deciding appropriate outcomes for the panel, within this research victims were explicit in their rejection of such responsibility, preferring the facilitator to make such decisions for them. This rejection of what is arguably an alleged central and crucial aspect of restorative justice is demonstrated within victim's statements including:

"I wanted them [facilitator] to decide ... I don't know about all this so I didn't want to have to do that..." [Interview-A007]:

"I'm glad the facilitator or chair made that decision, I think it was a good outcome, but it's not a decision I would have wanted to make ... I don't think I would have made it either ... I wouldn't want to be in that position." [Interview-B009], and finally:

"the decision at the end was good, I liked how they ask your opinion and take it on board before they make the decision – that's good but I wouldn't want it to go any further ... like I don't want to have to make that decision, it's not my job to....the facilitator is best for that." [Interview-A018].

This was reiterated within the majority of qualitative interviews with victim participants, and was present across restorative meetings addressing a range of offences, from property damage to physical injury. Victims explicitly identified the facilitator as being better placed to assume a decision making role during the restorative process, reflected within comments such as:

"I was apprehensive at first because I thought I would have to tell the offender what to do at the end of the panel, but luckily the facilitator sort of took over and did that themselves....I really didn't want to have to do that and I don't think I would have, had they [facilitator] not stepped in" [Interview-A029].

Some victims explicitly rejected the notion of assuming responsibility for deciding the outcome of the restorative meeting, stating:

“I didn’t want that responsibility...it should be for people who know what to do ... professionals...to make those decisions and take charge of things...” [Interview-A012].

The empirical data generated during this study appears to refute theoretical claims,⁴⁵⁴ and empirical arguments,⁴⁵⁵ that victim empowerment results from their assuming a decision making position within the restorative process, as such responsibilities are perceived negatively among victim participants of this study. Conversely, the decision making role was actively avoided by victims participating in this research, reflected in comments such as:-

“We were told we sat round in a circle and said you’ll all have your say, say your piece and say what you feel and what needs to be done to make things right. But if you’re not that way inclined you don’t want to stand in front of people and make speeches...and we don’t” [Interview-A003]:

“...well I would rather leave that to the police and the chair [facilitator], I wouldn’t even know where to start ... what would work for that particular offender ... yeah I think it may be better if they [professionals] took control of that part of the panel” [Interview-A013].

Many victims described the experience of being expected to make determinations regarding the outcome of the Panel and consequently those obligations undertaken by the offender negatively, and as something which they would prefer to avoid. This contrasts significantly with their positive account of aspects of the restorative process such as the opportunity to ask the offender questions or describing the impact of the offence. This is demonstrated in assertions including:-

⁴⁵⁴Zehr, H. (1985); Christie, N. (1977), Barton, C. (2003) Restorative Justice: The Empowerment Model, Sydney: Hawkins Press.

⁴⁵⁵Abrams, L., Umbreit, M., and Gordon, A., (2006) Young Offenders speak about meeting their victims: implications for future programs, Contemporary Justice Review, vol 9, no 3, pp.243-256; Armour, M., and Umbreit, M., (2006) Victim Forgiveness in Restorative justice Dialogue, Victims and Offenders, vol. 1, pp. 123-140.

“no I wasn’t expecting to have such a [decision making] role so it wasn’t of any great importance to me....it was more important that I was able to have my say about the impact of the offence...” [Interview-A016]:

It would appear therefore that victims interviewed within this research preferred that the facilitator control the restorative process and additionally decide upon the panels’ outcome. Victims repeatedly stated that they did not wish to occupy this position themselves:

“I wasn’t looking forward to deciding on the outcome...but luckily the facilitator did more than I expected they would and took most of it off me”, in addition to “I didn’t make the final decision, I got asked my opinion of it, and I agreed, but I didn’t have to tell them what to do myself...I didn’t want to do that.” [Interview-B011].

Such a rejection of what is often advocated as a central feature of restorative justice theory,⁴⁵⁶ was unexpected. This emphasis or desire for facilitator or third party control of the process and outcome directly contradicts restorative justice theory and past research purporting to demonstrate the benefits of restorative justice principles of stakeholder empowerment.⁴⁵⁷ Such a desire suggests again that, victims either remain confused regarding the restorative process and what to expect (regarding their role within the process), or that victims are aware of restorative justice theory and choose to explicitly reject those concepts of stakeholder ownership advocated within restorative theory. A third possibility exists that victims are aware of restorative theory but chose to only engage in those aspects which they see as desirable whilst avoiding aspects perceived as undesirable such as occupying the decision making role. However, what is clear is that the data collected throughout the qualitative interviews demonstrates a significant reticence for victims participating in

⁴⁵⁶ Braithwaite, J. (2002). *Restorative Justice and Responsive Regulation.*; Christie, N.(1977). *Conflicts as Property.*; Zehr, H. (1985). *Changing Lenses.*; Sullivan, D. & Tifft, L. (2001). *Restorative Justice, Healing the foundations of everyday lives.* Monsey, NY: Willow Tree Press.

⁴⁵⁷ Marshall, T., & Umbreit, M., (1994). *Victim Meets Offender, Impact of Restorative Justice and Mediation.* Monsey New York: Willow Tree Press.; Morris, A., & Maxwell, G., (2003). *Restorative Justice for Juveniles, Conferencing, Mediation and Circles.* Oxford: Hart Publishing.

restorative justice processes to assume the important decision making role. This is identified in statements such as:

“It’s really not my place to make that decision. The chair [facilitator] does this thing and knows what’s going on and what they can do, so I’m happy they make the decision and just ask your opinion...I think it’s too much to ask you to, if I didn’t know what to ask for how would people like pensioners cope...?”[Interview-B006].

Victims additionally claimed to be disinterested in such opportunities to determine the outcome of the restorative process, illustrated in comments including:

“...I probably wouldn’t be bothered about that [decision power], it’s not an area I know a lot about, they [the facilitator] know what they can allocate people for certain things ... I don’t I don’t come to these things so I don’t know. If I had more of an insight into it I probably would have wanted to but I didn’t realise that would be an option anyway.” [Interview-A010]:

“I think the most important bit was voicing my opinion and getting my thoughts across.” [Interview-A007].

Furthermore, this reliance upon the facilitator to occupy the decision making role within the restorative practice appears to reflect the role occupied by a Judge within the traditional Criminal Justice Process, from which restorative justice is intended to depart.⁴⁵⁸ Again, as discussed above, this apparent reliance upon the traditional criminal justice system over this restorative practice is repeatedly demonstrated within comments made by victims throughout this research, such as those discussed previously regarding physical arrangement of the restorative process and the demarcation of space. Thus it would appear that victims do

⁴⁵⁸Eglash, A. (1977). Beyond Restitution: Creative Restitution. In J. Hudson & B. Galaway (eds.), *Restitution in Criminal Justice*, Lexington, MA: DC Heath and Company.; Barnett, R. (1977). Restitution: A New Paradigm of Criminal Justice. *Ethics: An International Journal of Social, Political, and Legal Philosophy*.87(4), 279-301.; Johnstone, G. (2002). *Restorative justice: ideas, values, debates*, Cullompton, UK: Willan.

not specifically desire an opportunity to determine the outcome of the restorative justice process and the obligations undertaken by the offender. This supports the claims within previous reports,⁴⁵⁹ that whilst desiring greater inclusion within the traditional Criminal Justice Process, victims do not desire the acquisition of decision making powers in relation to offender sentencing however, it contradicts Christie's claims that conflicts should be returned to the individuals concerned.⁴⁶⁰

iii. Restorative Justice delivering Service Rights

Data collected during qualitative interviews conducted with victim participants following their restorative meeting clearly demonstrated that victims possessed mixed experiences of the restorative process. Whilst rejecting elements regarding their assumption of decision making positions within the process victim participants appear to identify specific aspects of the process positively. These elements appear to relate to aspects of the justice system previously defined as service rights,⁴⁶¹ contrasted to those procedural rights clearly identified as a central aspect of restorative justice theory and practice.⁴⁶² Service rights represent those aspects of the restorative model which accord participants greater interaction within the criminal justice process whilst protecting the due process rights of offenders.

Despite the apparent rejection of empowerment through decision making within the restorative process, victims identified and valued other aspects of the process, described as being central to restorative theory.⁴⁶³ This desire relates to the potential for input and

⁴⁵⁹ Shapland, J. et al (1985).; Kilchling, M. (1991).

⁴⁶⁰ Braithwaite, J. (1998). Restorative Justice. In M. Tonry (ed.), *Handbook of Crime and Punishment*, New York, NY: Oxford University Press.; Christie, N. (1977). *Conflicts as Property*.; Zehr, H. (1985). *Changing Lenses*.; Roche, D., (2003). *Accountability in Restorative justice*. Oxford: Oxford University Press,

⁴⁶¹ Ashworth, A. (2003). Rights, Responsibilities and Restorative Justice.; A. Ashworth, (1998). *Crime, Community and Creeping Consequentialism*. *Crim. L.R.*220.; Hall, M. (2010). *Victims and Policy-Making: A Comparative Perspective*. Cullompton: Willan.; Doak, J. (2005). Victims' Rights in Criminal Trials: Prospects for Participation. *Journal of Law and Society*. 32(2), 294-316.

⁴⁶² For greater discussion of victims and procedural rights within restorative justice see Chapter 1, Introduction, Section 4 and also Ashworth (ibid)

⁴⁶³ Morris, A. & G. Maxwell (eds.), (2001). *Restorative justice for juveniles*. Oxford: Hart Publishing., Strang, H. (2002). *Repair or revenge: Victims and restorative justice*. Oxford: Oxford University Press.

influence despite rejecting responsibility for outcome determination. The desire for influence and some level of input is reflected within statements such as:-

“I wanted to be asked, and I was. Once they [facilitator] know your feelings then they can change it [outcome] to meet them, it feels good knowing you’ve had an input.”

[Interview-B003]

Similar responses within other interviews include:

“I wanted to be asked what I thought...and I was. It’s good because you are listened to and they show they’ve [facilitator] heard you because they can change the outcome to meet your needs.” [Interview-A013].

The data within this research supports assertions within extant literature that the process of restorative justice can confer benefit upon victims of crime which would otherwise not be available within the traditional criminal justice system. These desires for interaction throughout the process appear to accord with the theoretical assertions made against the implementation of restorative justice by Andrew Ashworth, predicated upon arguments of protecting due process.⁴⁶⁴ Previous criticisms of the involvement of victims within the outcome deliberations of the justice process are avoided within this restorative practice where victims avoid the assumption of such responsibility, demonstrated in comments such as:

“No it [decision making role] wasn’t important to me....what I wanted was to see them [offender] and tell them what they did to me ...” [Interview-A026]:

“....well I would rather leave that to them [facilitator], I don’t know what you can get them to do, what they would do... they [the professionals] know so they’re better for that” [Interview-B014].

Despite explicitly rejecting the assumption of a determinative position within the restorative practice, victims’ comments clearly identify the opportunities provided for victim participation. Such victim interaction includes expressing their opinions and the relevance of

⁴⁶⁴ Ashworth, A. (2003). Rights, Responsibilities and Restorative Justice.

their role, far removed from the peripheral position occupied by victims within the traditional criminal justice system. These quotations suggest that the objectives of restorative justice philosophy can be fulfilled through the provision of service rights to victims, without the necessity to deliver procedural rights and their associated concerns regarding due process rights, equality and impartiality.⁴⁶⁵ This is further reflected within numerous victims' statements supporting the position of the facilitator as a decision making authority;

“...as far as I’m concerned the sentences is not my job, I’m not the one who knows best or whatever to do with that bit, that’s her [facilitators] job...”
[Interview-B003]

The data demonstrates reluctance among victims to assume such decision making positions. Victim statements explicitly state that it is preferable for the facilitator to undertake this role. Whilst finding support in some, limited theoretical literature,⁴⁶⁶ this is not supported within either restorative justice theory or the majority of empirical studies.⁴⁶⁷ This anomaly may arise from the reliance upon aspects of the traditional criminal justice process by victims in this research. This is illustrated initially by the victims' desire for an independent third party to occupy the controlling and decision making role within the Panel in a similar approach to a judge within the traditional court process. Such a desire is illustrated in statements such as:

“They [facilitator] should do that, I wouldn’t want to be face with the offender and have to tell them what they need to do, I think that’s too much really ... and they [facilitator] know what can actually be asked of them too”[Interview-A004].

⁴⁶⁵Crawford, A. (2009). Governing Through Anti-social Behaviour Regulatory Challenges to Criminal Justice. *British Journal of Criminology*, 49(6), 810-831.; Ikpa, T. (2007).Balancing Restorative Justice Principles and Due Process Rights in Order to Reform the Criminal Justice System. *Washington University Journal of Law & Policy*. 24, 301-325.

⁴⁶⁶Shapland, J. et al (1985).; Kilchling, M. (1991).

⁴⁶⁷Shih-YaKuo, Longmire, D., & Cuvelier, S. (2010). An empirical assessment of the process of restorative justice. *Journal of Criminal Justice*. 38 (3), 318–328.

This again appears to support the concept that victims participating within restorative justice practices continue to rely upon the traditional apparatus of justice located within a formal court, incorporating a police presence and involvement, but no control, relying upon Judges to fulfil those responsibilities. This could be described as mirroring their role within the traditional justice process, where the police are present but do not control the process.⁴⁶⁸ However, it suggests that many restorative justice objectives could be fulfilled without recourse to the provision of a decision making role upon the victim. This would avoid those criticisms of theorists regarding concerns over the offenders' due process rights and, avoiding an aspect of the process perceived by victims as undesirable.

Aspects of restorative justice which are received positively by victim participants and are valued appear to relate to elements of the restorative practice which are most readily integrated within the criminal justice process. This includes the expression of emotion and discussion of the impact of the offence upon the victim, already available within the traditional criminal justice system through the provision of victim impact statements during courtroom trials, although with varying success.⁴⁶⁹ This again questions the extent to which victims are relying upon their pre-existing understandings of the criminal justice system and the courtroom process in an attempt to comprehend the new and unfamiliar philosophy and practice of restorative justice, or whether such emphasis upon aspects which, whilst not exclusively within the remit of restorative justice philosophy represents a rejection of restorative philosophy in favour of the traditional methods of criminal justice resolution.

⁴⁶⁸ Carlen, P. (1976). The Staging of the Magistrates Justice. *British Journal of Criminology*. 16 (1), 48-55.

⁴⁶⁹ Sanders, A., Hoyle, C. Morgan, R. & Cape, E. (2001). Victim impact statements: Don't work, can't work. *Criminal Law Review*. June, 447-458.; Chalmers, J., Duff, P. & Leverick, F. (2007). Victim impact statements: Can work, do work (for those who bother to make them). *Criminal Law Review*, (December): 360-379.

5. Process, Outcomes and Resistant Retribution

Throughout extant literature the benefits of experiencing restorative processes are identified as being separate to those related to the outcome of such restorative meetings. Furthermore, theorists have asserted that the process itself is often of greater importance to victims than the contents of the final agreement.⁴⁷⁰ Data presented within ‘section i’ demonstrates the extent to which such attitudes are present among victim participants of this research, and rejects the claim that the outcome is seen as being of less importance than the experience. Furthermore, section ii presents data suggesting that victims do not value symbolic or emotional outcomes as highly as their material counterparts. Despite claims that symbolic reparation is perceived as equally important, this data indicates that victims desire visible, material obligations to be undertaken at the conclusion of the restorative meeting. This emphasis upon what are described as ‘real outcomes’ is reiterated in section (iii) addressing the extent to which retributive attitudes and desires of victims persist throughout the restorative process and are present within their assessments of the final outcome.

i. Process as Outcomes

This section discusses data collected during qualitative interviews with victim participants. It suggests that victims value the restorative process itself, separately from the outcome of the restorative meetings. This reiterates arguments made within existing literature that the act of engaging in restorative justice practices results in beneficial experiences for both victims and offenders.⁴⁷¹ Furthermore, theorists argue that the restorative process can

⁴⁷⁰Presser, L. & Van Voorhis, P. (2002). Values and Evaluation: Assessing Processes and Outcomes of Restorative Justice Programs. *Crime & Delinquency*.48(1), 162-188.; Braithwaite, J. (2003).Principles of Restorative Justice. In A. von Hirsch, J. Roberts, A.E. Bottoms, K. Roach and M. Schiff (eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (pp. 1–20). Oxford: Hart Publishing.

⁴⁷¹ Davis, R. et al. (1980). *Mediation and arbitration as alternatives to prosecution in felony arrest cases: an evaluation of the Brooklyn Dispute Resolution Centre*. New York, Vera Institute of Justice.; Maxwell, M. & Morris, A. (1993). *Family, victims, and culture: youth justice in New Zealand*. Wellington, New Zealand, Social Policy Agency and Institute of Criminology, Victoria University of Wellington.;Umbreit, M. (1994). *Crime*

often be of greater importance to participants than the final outcome.⁴⁷² However, such assertions are not supported within the data collected in pursuit of this research. Whilst victim participants valued aspects of the process and the experience of the restorative practice, they appear to accord greater value to the outcome of such processes.

Within extant literature, the ‘true value’ of restorative justice practices is often perceived as being the process itself and not the pursuit of a specific conclusion or zero-sum game as is often depicted within the traditional criminal justice system.⁴⁷³ A distinction emerges between restorative practices operating within America, where victims value material outcomes more highly than similar practices operating within England and Europe where less corporeal benefits, such as the opportunities for interaction and reassurance appear to be more highly valued by participants.⁴⁷⁴ Theorists remain divided over the preferred outcomes of a restorative justice practice, possibly in part due to the latent ambiguity of its terminology. Whilst some theorists advocate for direct material reparation from the offender to the victim,⁴⁷⁵ others assert that the true benefits of restorative justice lie in its ability to provide closure or emotional healing to the victim.⁴⁷⁶ The majority of extant empirical data addressing victim perceptions of the outcome of restorative practices focuses upon the individual output measurement of satisfaction, with victim ‘satisfaction levels’ often utilised as justification for future funding or illustrative of the processes success.⁴⁷⁷ However, as suggested within the initial chapter of this thesis, the individual measurement of ‘satisfaction’

victims confront their offenders: the impact of a Minneapolis Mediation Program. *Research on Social Work Practice*.4, October, 436-447.; Umbreit, M. (1994). *Victim meets offender: the impact of restorative justice and mediation*. New York, Criminal Justice Press.

⁴⁷²Crawford A (2000). Salient Themes and the Limitations of Restorative Justice. In A. Crawford & J. Goodey (eds.) *Integrating a Victim Perspective within Criminal Justice*. Aldershot: Ashgate.

⁴⁷³Zedner, L. (2004). *Criminal Justice*. Oxford: Clarendon Press, Oxford University Press.

⁴⁷⁴Meirs, D. *International Review of Restorative Justice*.; Latimer et al. (2005).

⁴⁷⁵Robinson, G., & Shapland, J. (2008). Reducing Recidivism A Task for Restorative Justice?. *British Journal of Criminology*, 48(3), 337-358.

⁴⁷⁶Witvliet, C., Worthington, et al. (2008). Retributive justice, restorative justice, and forgiveness: An experimental psychophysiology analysis.

⁴⁷⁷ For an extensive review of extant literature, the arguments referred to within this section and the limitations of past empirical studies see Chapter 1, Section 4, v.

at the conclusion of a restorative process cannot assist in determining why victims are satisfied, or to what aspects of the process and outcome their satisfaction relates.

Throughout this research a majority of the victim participants identified aspects of the restorative process which they perceived as being beneficial. This included opportunities which are not currently provided within the traditional criminal justice system, such as the interaction with the offender. Specifically, victims valued the opportunities restorative process provided to ask the offender questions regarding the offence. This is demonstrated through statements including:

“...being able to explain what they had done...that was the best part of the process”

[Interview-A018] and similarly:

“I think the chance to explain the possible consequences of his actions and to make him realise them, that’s the most important for me. Getting an apology was quite important too, but not as important as that.” [Interview-A012].

Furthermore, victims identified the ability to observe offender’s expressions of remorse as valuable, clearly demonstrated through assertions:

“seeing that he [offender] was really sorry ... with none of that attitude to save face, that was good I thought...probably the most important part ... that he [offender] was REALLY sorry”

[Interview-B009]:

“I thought being there when they apologised was really good, I mean the police tell you that it’s a young kid who’s sorry for what they’ve done but you don’t believe it do you...but being there when they do it changes everything...it’s the best part for me..” [Interview-A019].

This supports claims within extant literature that engagement in restorative justice practices offers benefits which the traditional criminal justice process cannot provide. This includes interaction between the victim and offender, opportunities for questioning the

offender and individual accountability by relevant stakeholders, the alleviation of fearful stereotypes, and achieving closure.⁴⁷⁸ It would appear therefore, from the above quotations that victims recognise the value of those aspects which are unique to the restorative process. Within the process itself victims appeared to value the expressions of remorse by offenders most highly, when they were perceived as being genuine (although the extent to which such expression demonstrated genuine remorse remained unknown). This is illustrated within quotations directly addressing the remorse expressed by the offenders including:

“Seeing him [offender] saying sorry...like they meant it, really...that was a really good part. You don’t normally get to see that sort of apology when it’s dealt with by the police...it’s what makes the process worth doing” [Interview-A021].

Following this expression of remorse, victims appeared to value the ability to interact with the offender, primarily due to the subsequent effect this interaction had upon their negative emotions resulting from their victimisation. These negative emotions are well documented within extant literature and include feelings of vulnerability, anger, shame, depression and fear of future victimisation.⁴⁷⁹ Of those potential effects provided by restorative justice, victims within this research appeared to most value the alleviation of their often exaggerated stereotypes regarding the offenders, expecting career hardened criminals. This is demonstrated in comments such as:

⁴⁷⁸ Braithwaite, J. (2003). Restorative Justice and a Better Future. In E. McLaughling, R. Fergusson, G. Hughes & L. Westmarland (eds.), *Restorative Justice Critical Issues* (pp.54-65). London, UK: Sage; Umbreit, M. (1994). *Victim Meets Offender: The impact of restorative justice and mediation*. Monsey, NY: Criminal Justice Press.

⁴⁷⁹ Tontodonato, P. & Erez, E. (1993). Crime, punishment, and victim distress. *Int’l Review of Victimology*, 3, 33.; Norris, Kaniasty, & Thompson. (1997). The psychological consequences of crime: Findings from a longitudinal population-based study. In R. Davis, A. Lurigio, & W. Skogan (eds.), *Victims of Crime* (2nd ed.) Thousand Oaks: Sage Publications.; Norris, F., & Kaniasty, K. (1997). Psychological distress following criminal victimization in the general population: Cross-sectional, longitudinal and prospective analyses. In M. McShane, & F. Williams (eds.), *Victims of Crime and the Victimization Process*. New York: Garland Pub.; Ruback, R.B. (1994). Advice to crime victims: Effects of crime, victim, and advisor factors. *Criminal Justice and Behaviour*. 21(4), 423-442.

“No, I was expecting them to be arrogant, sarcastic and weren’t going to listen or give a rats arse really...by the end of it they were all listening...they did apologise...Yea they did mean it...and you don’t expect that really” [Interview-A008]:

“well you have this idea that they’re [offender] is this thug...criminal type, maybe on drugs or something who doesn’t care about anything...but then you see them and it’s just a kid...from a poor background and you realise what it is...there’s no fear there then...and you can move on... that’s the best part” [Interview-A016].

In addition to being able to dispel these stereotypes victim participants additionally valued the restorative process’ ability to alleviate their fears of future victimisation, achieved through interactions with the offenders and subsequent discovery that the offence was a result of spontaneous action or opportunistic behaviour as opposed to targeted victimisation. This is reflected in victim comments stating:

“it’s reassuring to know that they didn’t pick you for any reason...that they [offender] wasn’t watching your house and it was just a random thing....you wouldn’t get to know that if you didn’t take part in this [restorative process]” [Interview-B007], reiterated within the comment:

“I suppose it was almost more important to hear how it happened and that we weren’t being picked for any reason ... that was good for peace of mind and was probably important we found that out...” [Interview-A017].

It is clear that victims identified the opportunity provided by the Community Justice Panel to ask the offender questions was described as very beneficial:

“Really I’d have to say the chance to see them [offender] and realise they’re just some young kid... that was probably the best part of the process. Being able to ask them questions too, like why they did it and how they got in... that was the real good part of the Panel...” [Interview-A012].

Additionally, the opportunity for victims to receive some explanation regarding the offence or their misconceptions over being specifically targeted were identified as an important aspect of the process, with victims often asserting comments such as:

“Just seeing them [offender] was worth it really, to know that they aren’t this career criminal or thug and that really it was just a mistake...that was a real benefit of the Panel...you don’t get other chances to sit opposite them [offender] and getting an explanation of the offence and why they did it...” [Interview-A009].

However, findings addressing the remorse expressed by offenders or the reassurance against re-victimisation, both within this research and those contained within extant literature must be considered with the limitation of self-selection from which restorative justice suffers.⁴⁸⁰ Those necessary pre-requisites of offender engagement in restorative practices operate directly to remove those unremorseful offenders. Additionally, with restorative practices restricted to first time offenders or minor offences, the participation of repeat offenders or hardened criminals is restricted or removed.⁴⁸¹

Contrary to assertions within existing literature,⁴⁸² data collected throughout the interview stages of this research suggested that throughout their engagement in the restorative justice process, victim participants perceived the process as being of less importance, focussing instead upon the final outcome of the meeting. Whilst expressing some appreciation for their experiences during the restorative process, it cannot be claimed that victims viewed the experience as equal to the final outcome of the meeting. This is illustrated in comments such as:

⁴⁸⁰ Rodriguez, N. (2007). Restorative Justice at Work: Examining the impact of restorative justice resolutions on juvenile recidivism. *Crime and Delinquency*. 53, 355-379.

⁴⁸¹ Umbreit, M. & Greenwood, J. (1997). *Criteria for Victim-Sensitive Mediation & Dialogue with Offenders* Washington, DC: U.S. Department of Justice, Office for Victims of Crime.

⁴⁸² Leonard, L. & Kenny, P. (2011). Measuring the effectiveness of restorative justice practices in the republic of Ireland through a Meta-Analysis of functionalist exchange. *The Prison Journal*. 91 (1), 57-80.; Tyler, T. (1990) *Why people obey the law*. New Jersey, USA: Princeton University Press.

“The whole meeting was useful...and I liked being able to ask questions and stuff...but at the end of the day it’s really the outcome that’s important isn’t it ... that’s why we are all there” [Interview-A08]:

“The outcome at the end is the most important part ... without that I really wouldn’t be happy. I liked being able to ask questions and stuff but I’d be lying if I said that [outcome] wasn’t the most important” [Interview-B012].

Such assertions contradict claims within extant literature, asserting that the value of the experience delivered by participation in restorative justice practices surpasses the outcome. Repeatedly described as being of greater importance than the final outcome, it is the experience of the deliberative, interactive, communicative process which delivers those numerous benefits of restorative justice within theoretical literature.⁴⁸³ However, victim participants engaging with this research clearly focus more upon the final outcome, describing its importance as being essential to their overall assessments of the entire process, without which they would not be content with their experiences:

“Getting that [outcome] at the end ... that was really the most important part, it really was what I thought needed to happen and I wouldn’t have been happy without it”

[Interview-A013]:

“The outcomes are more important. Of course it is, that’s the whole reason for going through the process, the outcome is most important not what you think of the process.

No it’s the outcome. ” [Interview-A005] .

⁴⁸³ Braithwaite, J. (1999). ‘Restorative Justice: Assessing Optimistic and Pessimistic Accounts’. *Crime and Justice: A Review of Research* 25, 1–127.; Daly, K. (2003). Mind the Gap: Restorative Justice in Theory and Practice. In A. von Hirsch, J. Roberts, A.E. Bottoms, K. Roach & M. Schiff (eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (pp. 219–36). Oxford: Hart Publishing.; Daly, K. (2004). A Tale of Two Studies: Restorative Justice from a Victim’s Perspective. In E. Elliott & R. Gordon (eds.), *Restorative Justice: Emerging Issues in Practice and Evaluation*. Cullompton: Willan Publishing.; Dignan, J., Sorsby, A. & Hibbert, J. (1996). *Neighbour Disputes: Comparing the Cost-Effectiveness of Mediation and Alternative Approaches*. Sheffield: Centre for Criminological and Legal Research, University of Sheffield.; Strang, H. (2002). *Repair or Revenge: Victims and Restorative Justice*. Oxford: Clarendon Press.

Such comments demonstrate the relative importance accorded to the conclusion and outcome of the Justice Panel, suggesting that within victims involved with this research, the outcome of the restorative practice was seen as being of greater importance than their experience and interaction with the offender.

Numerous victims made distinctions between what they perceived as material or significant undertakings within the Acceptable Behaviour Contracts and less favourable gestures. This is illustrated within victim comments including:-

“it’s all about the outcome really ... that’s what you’re there for, to have it repaired and move forward coming out of it...the process is all well and good but really the final agreement is more important” [Interview-B004] and similarly:

“the outcome was the best part of the whole thing...yes seeing them [offender] and asking questions was good but I would not be happy if I didn’t have that outcome at the end...it’s the most important bit I think” [Interview-A031].

Victims clearly recognise the benefits involved in participating in restorative processes. Specifically, victims value those aspects of communication not provided by the traditional criminal justice system. However, they continued to perceive the final outcome of the justice panel as more important than other aspects of the process. This is demonstrated through comments including:

“Well it’s good to talk with them but that’s not enough, I wouldn’t have been happy with that alone” [Interview -B009], with similar attitudes present within comments made by another victim:

“I thought the chance to explain and ask questions was very good ... but not enough for the thing [panel] to finish with, the contract is more important really, it’s what you are there for” [Interview -A028].

The central benefits which victims felt that they derived from the restorative process appear to be more closely linked to their interactions with the offender, as opposed to the

occupation of a position where they are able to make determinative decisions regarding the outcome of the case, again illustrated in comments such as:

“Getting the chance to see them and talk was great it really puts your mind at rest ... stops you thinking ‘why me’ or ‘what did I do’ and you realise it was just some young lads being stupid....it really helps you move on and stop worrying” [Interview-A017].

This further supports those assertions above; that victims participating in restorative justice processes value what can be described as service rights, and are subsequently free from criticism and opposition predicated upon the protection of an offenders due process rights.⁴⁸⁴ Furthermore, the data presented throughout this section emphasises a central claim forwarded in this thesis, that victim experiences and assessments of the restorative justice process are a product of multiple and complex considerations, which are incapable of accurate evaluation through a quantitative focus upon service delivery criteria.⁴⁸⁵ The extent to which victims are recorded as valuing aspects of the process in which they engage, whilst simultaneously assessing the relative worth of those experiences as being of less importance than the final outcome agreement demonstrates the complexity of victim satisfaction. It is argued throughout this thesis that evaluations of victim satisfaction fail to address, in

⁴⁸⁴ Von Hirsch, A. & Ashworth, A. (2005). *Proportionate Sentencing: Exploring the Principles*, Oxford: Oxford University Press.; Ashworth, A. (2003). *Rights, Responsibilities and Restorative Justice*.; Peachey, D. (1992). *Restitution, Reconciliation, Retribution: Identifying The Forms Of Justice People Desire*. In H. Messmer & H. Otto (Eds.), *Restorative Justice on Trial: Pitfalls and Potentials of Victim-Offender Mediation - International Research Perspectives*. London, United Kingdom: Kluwer Academic Publishers.; Wenzel, M., Okimoto, T., Feather, N., & Platow, M. (2008). Retributive and Restorative Justice. *Law and Human Behaviour*, 32(5), 375-389.

⁴⁸⁵ Barton, C. (2000). Empowerment and criminal justice. In H. Strang & J. Braithwaite (eds.), *Restorative justice: Philosophy to practice*, (pp. 55–76). Aldershot: Ashgate.; Daly, K. (2000) Revisiting the relationship between retributive and restorative justice. In H. Strang & J. Braithwaite (eds.), *Restorative justice: Philosophy to practice* (pp. 33–54). Aldershot: Ashgate.; Daly, K. (2003). Mind the gap: Restorative justice in theory and practice. In A. Von Hirsch, A. Roberts & A. Bottoms (eds.), *Restorative justice and criminal justice* (pp. 219–36). Oxford: Hart Publishing.; Miller, S. & J. Blackler (2000). Restorative justice: Retribution, confession and shame. In H. Strang & J. Braithwaite (eds.), *Restorative Justice: Philosophy to Practice* (pp. 77–91). Aldershot: Ashgate.; Duff, A. (2003) Restoration and retribution. In A. von Hirsch, A. Roberts & A. Bottoms (eds.), *Restorative justice and criminal justice* (pp. 43–59). Oxford: Hart Publishing.; Miers, D. (2004) Situating and Researching Restorative Justice in Great Britain. *Punishment and society*. 6(1), 23-46.

appropriate detail, the underlying reasons and multiple contributions of victim satisfaction.⁴⁸⁶

It is suggested that an accurate assessment of those contributory factors can only be delivered through the use of detailed qualitative research examining the entirety of the participants' experience.

The extent to which restorative justice, therefore, represents a process based philosophy as opposed to being outcome focussed is unclear in light of the continued emphasis placed upon the outcome agreements by victims participating in this research. For them, experience of the restorative practice, encompassing deliberative and communicative resolution of conflict with direct input from relevant stakeholders⁴⁸⁷ is not sufficient. Conversely, whilst identifying such aspects as being of value, victims clearly focus upon the outcome of the restorative process as the most important feature.

ii. Emotional reparation and restorative outcomes

The data discussed above suggests that, whilst not always emphasizing a desire for material or monetary reparation, a clear preference for what was perceived to be valuable undertakings was present. Such outcomes were repeatedly described as being more acceptable to victim participants. This is clearly illustrated in statements including:

“I wanted them [offender] to do something...something proper...worthwhile, you know....to show that they meant what they said. Words are always easy so you need something to prove it, by repairing the damage or paying for it or something...”

[Interview-A016].

⁴⁸⁶ Previously discussed within Chapter I, Section 4, v.

⁴⁸⁷ Doolin, K. (2010). *Empowering communities through restorative justice*. In K. Doolin, et. al, (eds.), *Whose criminal justice? State or community?* (pp. 143-157). Hook, Hampshire: Waterside Press.; Schiff, M. (2007). Satisfying the needs and interests of stakeholders. In G. Johnstone & D. Van Ness (eds.), *Handbook of Restorative Justice* (pp. 228-246). Cullompton, Devon: Willan Publishing.

It is suggested that victim preference for material outcomes over symbolic gestures such as remorse represents more than a simple desire for material reparation, illustrating further inconsistency between restorative justice theory and reality.

In addition to victim comments regarding the importance of the final outcome of the restorative justice process, further discrepancies arise between theoretical assertions regarding the content of such restorative agreement and assertions made by victims during the qualitative interviews. Within existing literature distinction is drawn between material reparation and emotional or symbolic reparation,⁴⁸⁸ with the former involving direct repayment to victims through either monetary provision or other, physical gestures of restoration. Symbolic reparation is reflected through the more emotional outcomes arising from participation in restorative justice practices and sincere expressions of remorse, such as greater peace of mind, alleviation of fear.⁴⁸⁹ Extant empirical data has suggested that within European restorative practices, the use of symbolic reparation is more common than that of material reparation.⁴⁹⁰ This is contrasted with restorative practices within America which appear to focus significantly upon material repayment.⁴⁹¹ Data within this research however indicates that, whilst those elements which contribute to emotional reparation are appreciated

⁴⁸⁸Daly, K. (2001). Revisiting the relationship between retributive and restorative justice. In H. Strang & J. Braithwaite (eds.), *Restorative justice: Philosophy to practice* (pp 33-54). Burlington, Vermont, U.S.: Ashgate Publishing Company.; Retzinger, S. & Scheff, T. (1996). Strategy for Community Conferences: Emotions and Social Bonds. In B. Galaway & J. Hudson (eds.), *Restorative Justice: International Perspectives* (pp. 315-336). Monsey, NY: Criminal Justice Press.; Braithwaite, J. (1998). *Education, Truth, Reconciliation: Comment on Scheff* *Revista Juridica Universidad de Puerto Rico*. 67: 609.

⁴⁸⁹Jacobsson, M. (2012). Victim-offender mediation in Sweden: Is the victim better off? *International Review of Victimology*. Published online before print July 19, 2012, doi: 10.1177/0269758012446985; Bergseth, K. & Bouffard, J. (2012). Examining the effectiveness of a restorative justice program for various types of juvenile offenders. *International Journal of Offender Therapy and Comparative Criminology*. Published online before print July 18, 2012, doi: 10.1177/0306624X12453551.

⁴⁹⁰Davis, G., Messmer, H., Umbreit, M. & Coates, R. (1992). *Making Amends*. London: Routledge.; Dignan, J. (2001). Restorative justice and crime reduction: Are policy makers barking up the wrong tree?. In E. Fattah & S. Parmentier (eds.), *Victim policies and criminal justice on the road to restorative justice* (pp. 329-53). Belgium: Leuven University Press.; Daly, K. (2002). Restorative justice: The real story. *Punishment and Society* 4(1), 55-74.

⁴⁹¹Schiff, M. (1998). Restorative Justice Interventions for Juvenile Offenders: A Research Agenda for the Next Decade. *Western Criminology Review* 1(1).; Fercello, C., & Umbreit, M. (1998). *Client evaluation of family group conferencing in 12 sites in 1st Judicial District of Minnesota*. For Restorative Justice & Mediation, School of Social Work, University of Minnesota.; Chatterjee, J. (1999). A report on the evaluation of RCMP Restorative Justice Initiative: Community justice forum as seen by participants. Ottawa, Ontario: Royal Canadian Mounted Police, Research and Evaluation Branch.

by victim participants, a significant number desired additional outcomes, specifically referencing more physical representations of remorse. This appears contra to those suggestions that within restorative practices operating in England the symbolic reparation is of greater importance to victims than true physical restoration.⁴⁹² However, this emphasis upon more corporeal outcomes such as direct repair or other ‘something proper’ as described within the above quotation (Interview-A016) may reflect victim reliance upon the traditional courtroom process, discussed within section 3.

Throughout the interviews, numerous victims expressed some degree of disinterest with the offender’s offers of apologies and remorse. Whilst accepting that such an apology was a beneficial experience to some degree, victims did not perceive it as being the most important aspect of the process. A significant proportion of victims suggested that an apology alone was not sufficient, regardless of the sincerity of the apology or the remorse expressed by the offender:

“well I think it’s easy to say sorry isn’t it....you don’t really have to do anything ...so I thought they should need to do something more...something to prove what they were saying, that would be hard [to do]” [Interview-A019].

This lack of importance allocated to those offers of apologies and offender remorse is unexpected in light of extant theory. Theorists claim that the interaction between victim and offender leading to the apology itself are significant aspects of the restorative process.⁴⁹³ They suggest such opportunities assist with alleviating those negative emotions experienced following victimisation, which are often compounded by the traditional criminal justice

⁴⁹²Wilcox, A., & Hoyle, C. (2004). *The national evaluation of the Youth Justice Board's restorative justice projects*. London: Youth Justice Board for England and Wales.; Shapland, J., Robinson, G., & Sorsby, A. (2011). *Restorative Justice in Practice; Evaluating what works for victims and offenders*. London: Routledge.; Nugent, W., Umbreit, M., Wiinamaki, L., & Paddock, J., (2001). Participation in Victim-Offender Mediation and Reoffense: Successful Replications?. *Research on Social Work Practice*. 11 (1), 5-23.

⁴⁹³Leonard, L. & Kenny, P. (2011). Measuring the effectiveness of restorative justice practices in the Republic of Ireland through a meta-analysis of functionalist exchange. *The Prison Journal*. 91(1), 57-80.; Rossner, M. (2011). Emotions and interaction ritual: A micro analysis of restorative justice. *British Journal of Criminology*. 51(1), 95-119.

system.⁴⁹⁴ The extent to which victims perceived offers of apologies as being of limited importance is illustrated in comments such as:

“they looked like they were sorry when they said it, like actually sorry and not just saying it because it was expected ... but that’s not the point really...i think they need to prove they are and for that they need to do some work or somethingstuff they would like to do normally ...” [Interview-A024].

Such statements indicate that, whilst apologetic offenders are appreciated to some extent, victims are less interested in the apology when compared to the contents of the final outcome agreement, or Acceptable Behaviour Contract. Victims clearly value elements of material reparation, with less consideration of the emotional aspects such as expressions of remorse or apologies. This directly contradicts extant literature, asserting that the emotional benefits resulting from participation in restorative justice practices are received with equal importance as offers of material reparation.⁴⁹⁵ The distinction between those attempts of emotional reparation and material restoration and the extent to which they are received by victims is illustrated by statements such as:

“He said sorry but that’s not important ... I wanted him to pay for the damage...to get it repaired and realise what it’s been like not being able to use it [car] for all this time, saying sorry wasn’t enough on its own...” [Interview-A002].

It would appear that within this research, victim participants value those elements of emotional and symbolic reparation less highly than undertakings of a more corporeal nature. The extent to which victims’ value material reparation more highly than its symbolic

⁴⁹⁴Newburn, T. (1993). *Long term needs of victims*.;Goodey, J., (2005). *Victims and Victimology*.;Zedner, L. (2004). *Criminal Justice*.

⁴⁹⁵Umbreit, M., Coates, R., Kalanj, B., Lipkin, R., &Petros, G. (1995). *Mediation of criminal conflict: An assessment of programs in four Canadian provinces - executive summary report*. Restorative Justice & Mediation, School of Social Work, University of Minnesota.; Umbreit, M., &Fercello, C. (1997). *Interim report: Client evaluation of the victim/offender conferencing program in Washington County (MN)*. Restorative Justice & Mediation, School of Social Work, University of Minnesota.; Umbreit, M., &Fercello, C. (1997). Woodbury Police Department's restorative justice community conferencing program: An initial assessment of client satisfaction, for Restorative Justice & Mediation, School of Social Work, University of Minnesota.

counterpart is clearly demonstrated throughout the quotations discussed above, contradicting those assertions within extant literature, and demonstrating the inconsistencies between restorative theory and reality suggested within this thesis.

iii. Resistant Retribution

The final concept to emerge from data collected during victim interviews expands upon the sections within this chapter demonstrating reliance upon the traditional criminal justice system, through establishing a desire among victims for punitive outcomes. Theorists assert that restorative justice philosophy represents a departure from the existing paradigms of punishment, specifically retributivism,⁴⁹⁶ although, as identified within Chapter II of this thesis, the extent of their separation remains unresolved. From those quotations discussed above, the language employed and the principles upon which victims relied during their qualitative interviews were clearly retributive in nature. This persisting retribution was present across both case study sites. Retributive references were present within victim discussions regarding the purpose of the restorative justice process, their participation, the contents of the Acceptable Behaviour Contract and their ultimate assessment of the entire restorative process. Data presented below demonstrates that, despite assertions that restorative justice represents a departure from the retributive paradigm of punishment and offers ‘new lenses’ through which to view conflict resolution,⁴⁹⁷ the extent to which this is replicated among victims participating within this research is limited.⁴⁹⁸ However, victims’

⁴⁹⁶ Richardson, G. (1997). Restorative justice: framework for the future of corrections '. *Corrections Today*.59 (7), 20-1.; Umbreit, M. &Coates, R. (1999).Multicultural implications of restorative juvenile justice.*Federal Probation*.63 (2), 44-52.; Du Pont, P. (2001). Restorative justice: an alternative to jail. *Human Events* , 57 (11), 12-13.; Fox, D., Dhami, M., and Mantle, G. (2006). Restorative Final Warnings: Policy and Practice. *The Howard Journal*. 45 (2), 129-140.

⁴⁹⁷Zehr, H. (1985). Retributive justice, restorative justice.*New Perspectives on Crime and Justice – Occasional Paper Series*. Kitchener Mennonite Central Committee, Canada Victim Offender Ministries.;Zehr, H. (1985). *Changing Lenses*.

⁴⁹⁸The perception of restorative reparation projects as punishment is also demonstrated within Offenders undertaking such work within past research; Curran, J. MacQueen, S. Whyte, B. with Boyle, J. (2007).Forced to

reliance upon retributive principles during the restorative justice process does not appear incompatible with their overall satisfaction with the process. The majority of victim participants, whilst criticising elements of the process, described their experience of the restorative process as being beneficial, with high levels of satisfaction.⁴⁹⁹ This suggests that despite their reliance upon retributive notions of justice, the process of restorative justice were nevertheless experienced positively. This chapter suggests that this data indicates that retributive and restorative justice are not mutually exclusive or incompatible.⁵⁰⁰ The extent to which victims can participate in a restorative justice process, whilst retaining retributive principles, and view the process as a beneficial experience indicates that the two philosophies can, to some extent be reconciled.⁵⁰¹

In addition to the desire for material outcomes detailed above, the language utilised by the majority of victim participants when discussing the contents of the Acceptable Behaviour Contract at the conclusion of the Justice Panel suggests a reluctance or inability to relinquish retributive desires. This is illustrated within statements such as:

“I wanted some justice...some punishment to make them realise they [offender] can’t just go around doing this whenever they please” [Interview-A019]:

Make Amends: An Evaluation of the Community Reparation Orders Pilot. *Crime and Justice Research Findings* No 95. Edinburgh: Scottish Executive <http://www.scotland.gov.uk/Resource/Doc/195674/0052459.pdf>

⁴⁹⁹Umbreit, M., W. Bradshaw & R. Coates (1999). Victims of severe violence meet the offender: Restorative justice through dialogue. *International Review of Victimology*. 6(4), pp. 321–43; Umbreit, M.S., Coates R.B. & Vos, B. (2005). Victim offender mediation: Evidence-based practice over three decades. *The Handbook on Dispute Resolution*, Josey-Bas.; Umbreit, M.S., Coates R.B. & Vos, B. (2005). Victim offender mediated dialogue: Three decades of practice and research. In P. Herman (ed.), *The Blackwell Handbook on Mediation : A Guide to Effective Negotiation*. London: Blackwell Publishing.; Umbreit, M.S., Vos, B., Coates, R.B., & Brown, K. (2003). *Facing Violence: The Path of Restorative Justice & Dialogue*. Monsey, NY: Criminal Justice Press.; Kuo, S., Longmire, D., & Cuvelier, S. (2010). An empirical assessment of the process of restorative justice, *Journal of criminal justice*. 38, 318-328.

⁵⁰⁰ For a review of this debate in greater detail see Chapter I, Section 4.

⁵⁰¹ Campbell, T. (1984). Compensation as Punishment. *University of New South Wales Law Journal*. 7(2), 338-361.; Daly, K. (2010). Revisiting the relationship between retributive and restorative justice. In C. Hoyle (ed.), *Restorative justice : critical concepts in criminology (Vol. 4)*. London, United Kingdom: Routledge.; Duff, A. (2003). *Punishment, Communication and Community*. New York, NY: Oxford University Press.; Young, R., & Hoyle, C. (2010). Restorative Justice and Punishment. In C. Hoyle (Ed.), *Restorative justice : critical concepts in criminology (Vol. 4)*. London, United Kingdom: Routledge.

“They needed something to be disciplined....for me just talking about what they did wasn’t enough ...” [Interview-B004].

Restorative justice theory, whilst continuing to search for a universal definition, repeatedly emphasises its divergence from punitive retributive principles upon which the traditional criminal justice system is built.⁵⁰² The central features of restorative theory are often depicted as departing from labelling associated with the retributive judgement of the offenders during the criminal justice process.⁵⁰³ Central to the debate regarding the reconciliation of restorative and retributive paradigms of justice, is the apparent inconsistency of restorative justice objectives with retributive principles. The prospective focus of restorative justice theory, avoiding the dangers of labelling and punitive judgement appears inconsistent with retributive principles of justice.⁵⁰⁴ However, within the qualitative interviews victim participants repeatedly employed punitive language when discussing the offender’s experience of the restorative process and the outcome reached at the conclusion of the panel. The use of such punitive language is demonstrated through victim statements such as:-

“They [offender] needed to be taught a lesson” [Interview-A027]:

“without any real punishment it’s pointless, it’s just words ... you need them to have to do something real, like work or some other punishment to make the whole process worthwhile...” [Interview-A014].

⁵⁰²Zedner, L. (2004). *Criminal Justice*.; Sanders, A., Young, R., & Burton, M. (2010). Oxford: Oxford University Press.;Cavadino, M. &Dignan, J. (2007) Oxford: Oxford University Press.

⁵⁰³Mead, G. (1934) *Mind, Self, and Society*. Chicago: University of Chicago Press.;Tannenbaum, F. (1938). *Crime and Community*. London and New York: Columbia University Press; Becker, H. (1963) (revised 1973). *Outsiders*. New York: Free Press.;Goffman, E. (1963). *Stigma: Notes on the Management of Spoiled Identity*. Englewood Cliffs, NY: Prentice-Hall.

⁵⁰⁴Wenzel, M., Okimoto, T., Feather, N., &Platow, M. (2008). Retributive and Restorative Justice.*Law and Human Behaviour*, 32(5), 375-389.; Peachey, D. (1992). Restitution, Reconciliation, Retribution: Identifying The Forms Of Justice People Desire. In H. Messmer& H. Otto (eds.), *Restorative Justice on Trial: Pitfalls and Potentials of Victim-Offender Mediation - International Research Perspectives*. London, United Kingdom: Kluwer Academic Publishers.; Duff, A. (2003). Restoration and Retribution. In A. Von Hirsch, J. Roberts, A. Bottoms, K. Roach & M. Schiff (eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* Oxford, United Kingdom: Hart.

The clear retributive elements present within those above quotations appears to be a direct contradiction with the central premise of restorative justice, that punitive outcomes are not sought and that emphasis is placed upon restoration of the victim and offender in the eyes of the community. Victims explicitly refer to punishment and its purpose or intention through imposing infringements upon an individual's liberty, justified through their previous offence. This focus upon retributive aspects within the Acceptable Behaviour Contract was present throughout the majority of victim interviews, with participants commonly asserting that:

“I wanted to teach them a lesson, so that they [offender] knows not to do this again...” [Interview-B016];

“They needed to have something unpleasant to do, it's fine looking forward but what they did is just as important...” [Interview-B008] and;

“I think it should be serious, they are still criminals at the end of the day, and they need to realise that and accept the consequences” [Interview-B004].

The presence of retributive perspectives was not confined to the language employed by victims participating in the research but also to the content of the outcome agreement, or Acceptable Behaviour Contract. Throughout the interview process victims repeatedly described the more onerous tasks contained within the acceptable behaviour contracts more favourably than the less physically demanding, symbolic gestures. Victims appeared to identify onerous tasks commonly associated with community sentences,⁵⁰⁵ rather than the more emotional reparation. This is illustrated through statements including:

“I wanted them [offender] to do some actual work, something that they would find hard ... like litter picking or something like that in the community, so they need to work hard because of what they had done...” [Interview-A009].

Furthermore, victims provided other examples of tasks which offenders could undertake as part of their Acceptable Behaviour Contract which have been previously utilised

⁵⁰⁵Criminal Justice Act 2003, Section 177.

as community sentences.⁵⁰⁶ This includes the acts within community rehabilitation and punishment orders such as the removal of graffiti, the maintenance of public areas and the repair of broken property, in addition to the imposition of a curfew similar to Curfew Orders under the Act. These suggestions are demonstrated through comments such as:

“I was glad he [offender] had to do that, as it will make it stick in his mind. This panel won’t be remembered but he’ll remember having to paint over what he had done, that would take a long time and hard work....” [Interview-B002].

Following this apparent desire to value punitive outcomes more highly than symbolic reparation or restorative outcomes, it does not appear possible to explain victim participants’ reliance upon retributive language as a result of limited vocabulary. Victim participants clearly identify those outcomes which are more onerous and similar to community punishments administered within the traditional criminal justice system as being preferential or more valuable than outcomes discussed within restorative justice literature. Such identification and preference is demonstrated through comments such as:

“Yea it was OK that they [offender] had to write the letter, but I wasn’t really bothered about that... I was happier with them working at the school, cleaning and stuff...”

[Interview-B008].

Such outcomes, whilst similar to community sentences, are not readily accepted as part of the restorative justice paradigm. Despite the *prima facie* consistent features of rehabilitation, repair and reconciliation, restorative justice theorists have rejected the incorporation of community justice within the restorative paradigm,⁵⁰⁷ due to their apparent

⁵⁰⁶ *ibid*

⁵⁰⁷ McCold, P. (2004). Paradigm Muddle: The Threat to Restorative Justice Posed by Its Merger with Community Justice. *Contemporary Justice Review*. 7(1), 13-35.; Karp, D. (2004). Birds of a Feather: A Response to the McCold Critique of Community Justice. *Contemporary Justice Review: Issues in Criminal, Social, and Restorative Justice*, 7 (1), 59-67.; Strang, H. (2004). The Threat to Restorative Justice Posed by the Merger with Community Justice: A Paradigm Muddle. *Contemporary Justice Review: Issues in Criminal,*

incompatible foci. Such theorists would assert that emphasis upon punitive outcomes, present within victim participants' interview responses cannot be reconciled with restorative justice, despite its persistent latent ambiguity or its apparent ability to encompass multiple and diverse practices.

The continued and endemic use of punitive language and retributive centric outcomes described by victim participants throughout this research does not appear commensurate to those aims of restorative justice theory. This desire among victims for punitive sanctions and the use of punitive language remains unexplored. However, the presence of such retributive desires and principles among victim participants within restorative justice practices, who then record high satisfaction with the overall process, appears to question to extent to which the two theories are truly incompatible. Victim statements suggest that the existence of restorative justice practices within a retributive paradigm is not precluded due to the central features of restorative theory, often described as dichotomous with retributive principles.⁵⁰⁸ The existence of restorative justice theory, as a dichotomous alternative to retributive justice as advocated by original theorists, would appear to be undermined by practice which enables the existence of both restorative practice and retributive paradigms contemporaneously. Whilst such reconciliation can be criticised by theorists, notably maximalist advocates,⁵⁰⁹ as not representing a true model of restorative justice implementation, it would appear that such practices can nevertheless fulfil restorative objectives. If empirical data suggests that in practice, the implementation of restorative justice can fulfil those central tenants of its philosophy, whilst appearing to satisfy victim participants who continue to possess retributive desires then the incompatibility of the two theories is undermined. Traditional literature emphasising the separation of restorative justice from retributive paradigms must be

Social, and Restorative Justice, 7 (1), 75-79.; McCold, P.(2004). Paradigm Muddle: A Response to the Responses. *Contemporary Justice Review*. 7(1), 143-146.

⁵⁰⁸ Peachey, D. (1992). *Restitution, Reconciliation, Retribution*

⁵⁰⁹ Dignan, J. (2002). *Restorative justice and the law*.

reassessed in light of the apparent reconciliation suggested by contemporary empirical data. Furthermore, data within this research suggests that victim participants desire greater incorporation of retributive principles within restorative justice practices, specifically identifying the symbolic role of censure occupied by a retributive justice system. However, despite engaging with restorative justice under the auspices of retributive desires, victim participants within this research recorded high levels of satisfaction with the overall process, suggesting that the restorative and retributive justice are capable of reconciliation.

6. Chapter Summary

The empirical data of this research demonstrates that a disjunction exists between those mixed experiences recorded by victim participants following their participation in restorative practices and traditional restorative justice values. This follows from data which indicates victim participants value aspects of the practices which are not easily reconcilable with ‘core’ aspects of restorative justice theory, but appear to mirror traditional criminal justice processes.

The data presented above questions several central assumptions of restorative justice philosophy advocated within extant literature. Firstly, assertions that restorative justice delivers benefits to participants due to its departure from the formal criminal justice process, does not appear to be valued by victim participants in this study. Having engaged in the restorative process, those victim participants appear to desire greater integration of the formal mechanisms of justice through both physical demarcation of space and the procedural demarcation of relevant participants, specifically the victim and offender. This reliance upon courtroom imagery and the extent to which victims attempt to overlay court proceedings over restorative processes represents further evidence that a complete departure from the traditional, formal resolution of criminal proceedings is not desired.

Secondly, from data discussed above the presence and role of the police within the restorative justice process was identified as being of critical importance to victim participants. Specifically, the ability of a police presence to confer authority to the restorative process was explicitly identified. Again this appears somewhat contradictory to restorative justice theory which espouses the benefits of informal resolution, separate from the ‘professionals’ of the legal process. Additionally, victims’ desire for a police presence, to fulfil a position of authority implicitly suggests that the restorative process itself, and consequentially the facilitator, were incapable of a position of equivalent authority.

The central theme of responsibility was identified and supported by data presented within this chapter. Again, theoretical literature addressing restorative justice repeatedly asserts that the empowerment of participants and subsequent benefits arise from their assumption of a decision making role, concluding in a deliberative outcome of the restorative process.⁵¹⁰ However, victim participants within this research explicitly identified attempts to confer such a decision making role upon them as undesirable, resulting in negative experiences of the process. Furthermore, victims expressed a clear desire that such decisions would be best undertaken by the restorative facilitator, with consideration of the victims’ views. This represents a clear departure from those theories developed by Christie, upon which restorative justice practice is based, specifically that the removal of conflict from its key stakeholders by legal professionals is detrimental.⁵¹¹ Conversely, data collected during this research suggests that attempts to return decision making power to those participants is negatively received.

Furthermore, victim participants appear to desire the integration of a more formal, court based process within restorative practices. This desire, running counter to the central claims within extant literature suggests that victim participants transpose traditional criminal

⁵¹⁰ Roche, D. (2003) *Accountability in Restorative Justice*

⁵¹¹ Christie, N. (1977), *Conflicts as Property.*; King, M., Freiberg, A., batagol, B. And Hyams, R. (2009) *Non-Adversarial Justice*. Sydney: Federation Press.

justice mechanisms over restorative practices. Finally, victim participants' assessments of the restorative outcomes were examined, indicating that whilst the process itself is valued, affirming arguments within extant literature, victims additionally seek an outcome which is perceived as being of value, focussing upon punitive elements. This chapter demonstrates, through reliance upon original empirical data supplemented by literature that a discrepancy exists between victim experiences of restorative practice and those central claims within restorative justice theory.

The final section of this chapter discussed restorative process, subsequent outcomes, and the extent to which victim participants were able (or willing) to depart from retributive paradigms of justice. The empirical data demonstrated that, as evidenced within extant empirical studies, victim participants value the process of restorative justice, specifically for the opportunities presented to ask questions and interact with the offender. However, previous research has suggested that the value of such experiences is often perceived as being of greater importance than the final outcome of the restorative process. The quotations presented within this chapter suggest that whilst victim participants valued the opportunities provided by the process, they continued to value the final outcome of the restorative process more highly than their interaction with the offender. Furthermore, victim participants valued material or physical aspects of the final outcome more highly than emotional or symbolic gestures of remorse. Finally, the extent to which victims are willing or able to relinquish retributive perspectives during restorative justice processes is questioned, with the majority of participants of this research continuing to assert retributive desires throughout the restorative process. Indeed, those Acceptable Behaviour Contracts which contained tasks more familiar to community sentences within the traditional criminal justice system were perceived more favourably by victim participants than agreements which would appear to fit more easily

within the 'restorative ideal'.⁵¹² However, it would appear that despite their continued reliance upon retributive principles throughout their participation in the restorative justice practice, victim participants continued to value the restorative experience. This therefore questions the extent to which it is necessary for victims to relinquish those retributive principles or desires, as the data of this research suggests that they are not the dichotomous alternative to restorative justice and indeed are capable of existing simultaneously, in tandem within the same criminal justice system and disposal.

⁵¹²Zehr, H. (1985). *Changing Lenses.*; Braithwaite, J. (1989). *Crime Shame and Reintegration.*; Marshall, T. (1999). *Restorative justice: An overview.* London, England: Home Office, Research Development and Statistics Directorate.

Chapter V

Restorative justice and Victim Experience: an Inverse Relationship and Expectation-Reality Gaps

1. Introduction

Chapter three established levels of awareness possessed by victim participants of restorative justice, it examined their knowledge and motivation for engaging in such processes. Chapter IV explored victim participants' experiences of their engagement in the restorative justice practice and identified the aspects of the process which they valued. It identified their desire (specifically the lack of desire) for assuming a position of responsibility, their continued emphasis upon the formality of the process and their reliance upon court room imagery. This chapter brings together the data presented within the preceding chapters regarding victim expectations and experiences and establishes the extent to which a nexus exists. It identifies restorative justice as a complex social interaction, where the participant experience is influenced by multiple factors.⁵¹³ Section 2 addresses victim experiences of the restorative justice process presented within Chapter IV, examining the extent to which victims' possessed accurate or erroneous expectations. The extent to which such expectations remained unfulfilled, and their subsequent impact is also explored. Victim experiences of the offender are then discussed within section 3, again with reference to those relevant expectations possessed by the victim. It would appear that elements of the process which victims did not expect to be present, such as offender remorse, were not valued as highly by victims as other elements of the process. Section 5 then explores the apparent

⁵¹³ Armstrong, J. (2013). Factors contributing to victims' satisfaction with restorative justice practice: a qualitative examination. *The British Journal of Community Justice*.10 (2),39-54 .

inverse relationship which exists between victim experiences and traditional restorative justice values, again due to their limited understanding and flawed expectations. Those elements of the philosophy which are implemented by the aforementioned ‘culture carriers’ are identified and discussed in light of the data collected throughout this research. Finally, section 6 addresses the preparatory stages of the restorative justice process and its apparent inability to successfully educate victim participants regarding restorative theory and practice, due to its pursuit of multiple objectives including education, securing participation and preparation.

2. Restorative justice and mixed experiences

From the data collected it would appear that victim participants’ experiences of the restorative justice process are mixed, with clear differences existing between their assessments of specific aspects of the process. These mixed experiences have the potential for one aspect of the process to impact negatively whilst continuing to perceive the process positively, a factor which remains unexplored within both empirical and theoretical literature. This section explores the extent to which victim participants’ experience of the restorative justice process is both a complex and multifaceted interactionary experience.⁵¹⁴ Within victim participant experiences, it is argued that the restorative process is not valued uniformly, but separated into specific aspects which elicit varying degrees of appreciation. Furthermore, such separation may be exacerbated through the actions of ‘culture carriers’ and the selection of aspects of restorative justice philosophy implemented by each individual practice.

Victim participant responses throughout this research demonstrated mixed experiences of specific aspects of the restorative justice process. Whilst the potential for

⁵¹⁴ Becker, H. (1963). *Outsiders: Studies in the Sociology of Deviance*. New York, The Free Press.; Blumer, H. (1969). *Symbolic Interactionism*. Englewood Cliffs, NJ, Prentice-Hall.; Mead, G. (1934). *Mind, Self and Society*. Chicago, University of Chicago Press.; Sumner, C. (1994) *The Sociology of Deviance: An Obituary*. Buckingham, Open University Press.

poorly implemented restorative justice to impact negatively upon victim participants is well documented within literature,⁵¹⁵ the potential for one aspect of the process to impact negatively in an otherwise beneficial experience is relatively unexplored. It is only through examining such processes in detail, through qualitative investigation that the underlying reason behind the alleged benefit of restorative justice can be determined.

Within this research, the existence of unsatisfactory or negative experiences reported by victims arising from specific aspects of the restorative justice process appears to contradict restorative advocates' assertions and restorative theory that the process is of great benefit to victims, especially through rectifying those well documented criticisms of the traditional criminal justice process. Furthermore, within empirical reports which demonstrate (to some extent) lower levels of victim satisfaction than one would expect, this is often allocated to a failure of the particular restorative practice to adequately prepare participants for their restorative encounter.⁵¹⁶ It is claimed that those low levels of satisfaction and reports of negative experiences can be directly related to inadequate preparation of participants,⁵¹⁷ but is offered without further examination or discussion. Conversely, data generated throughout this research, collected through both peer observation, and questioning, clearly describes the preparation received by all participants as both extensive and rigorous, rejecting those attempts to explain the poor experiences of some victims to inadequate preparation. However, despite this, victim participants continued to report lower levels of satisfaction with aspects of the restorative process, whilst concluding that, overall, the process was beneficial. This

⁵¹⁵Shapland, J., et al (2007). *Restorative justice: the views of victims and offenders, The third report from the evaluation of three schemes.*; Barton, C. (2004). *Restorative Justice The Empowerment Model.*; Hill, R. (2002) Restorative Justice and the Absent Victim: New Data from the Thames Valley, *International Review of Victimology*.9 (3), pp. 273-288.; Gal, T. &Moyal, S (2011). Juvenile Victims in Restorative Justice: Findings from the Reintegrative Shaming Experiments. *British Journal of Criminology*. 51(6): 1014-1034.

⁵¹⁶Morris A., Maxwell G.M. & Robertson J. (1993). Giving victims a voice: a New Zealand experiment. *The Howard Journal*.32(4): 304–321.

⁵¹⁷Hoyle, C., Young, R., & Hill, R. (2002) *Proceed with Caution: An Evaluation of the Thames Valley Police Initiative.*

multifaceted reaction to investigation into 'victim satisfaction' is reflected within participant responses such as:

“...Parts of it yeah [were good] ... I didn't like having to say what should happen to them [offender] though...but it was really good that you can find out it [the offence] wasn't for anything I had done...” [Interview-B008].

And again within “I wasn't happy with sitting in a circle, I mean I was right opposite them [offender] and I wouldn't want anyone else to have that....it would be better with a table, or some proper layout...to give it more formality. Other than that i thought it [the restorative meeting] went well...”.[Interview-A006].

The quotations clearly demonstrate that victim's value different aspects of their experience within the restorative process independently, seeing some aspects as being beneficial whilst expressing discomfort and negative perceptions of others. Such a distinction can be illustrated immediately through responses offered by Interview-A005 who, without prompting identified individual aspects of their experience as being beneficial with others being detrimental:

“It's a fantastic process....and very powerful but....it needs to lose those aspects which make it more like a Sunday school meeting....the layout, the chairs that sort of thing...if they were changed I think the entire thing would be perfect....”

[Interview-A005].

Clearly this demonstrates that even within an overall positive experience there remain aspects of participant experience with restorative justice programmes which are not well received, which numerous evaluations employing reductionist measures of 'victim satisfaction' cannot fully address. Victim experiences appear specific to the practice in which they engage and, subsequently, such specific experiences and understanding of the restorative process is of particular importance due to the impact of the commodification of restorative

justice philosophy detailed within Chapter 1. The design of programmes will inevitably modify the aims and objectives set within each individual practice and will impact upon the actions of culture carriers and the facilitator in how they interpret the restorative paradigm and how they convey that understanding to those individuals identified as victims.

Furthermore, responses such as those above appear to identify restorative justice and victims' engagement in such practices as a complex interactionary experience,⁵¹⁸ requiring detailed assessment of the multiple contributory factors relating to participant interpretations of the success and benefit of the programme to participants. What is clear from the data generated during this research project is the significant extent to which victims undergo a range of experiences, both positive and negative, when engaging in restorative justice practices. However, these mixed experiences appear to be addressed superficially within previous research projects and relatively unacknowledged within theoretical literature.

3. Explaining victim experiences within restorative justice practices

This section examines those aspects of restorative justice which are perceived as important by victim participants. Chapter IV identified a disjunction between those mixed experiences of victims participating in this restorative justice practice and traditional restorative justice values. Such disjunction has arisen from the commodification of restorative justice philosophy by those culture carriers within each practice. Despite those empirical claims that restorative practices increase victim satisfaction with the criminal justice system (overall), the data of this study appears to indicate that specific aspects of the experiences resulted in negative experiences for victim participants which, if possible, they would have avoided. Additionally, the previous chapter identifies aspects of the restorative process which

⁵¹⁸Goffman, E. (1963). *Stigma*.; Becker, H. (1963). *Outsiders*.; Mead, H. (1934). *Mind, Self, and Society*.; Matsueda, R.L.(1992). Reflected appraisals, parental labelling and delinquency: specifying a symbolic interactionist theory. *American Journal of Sociology*, 97:1577-1611.

were perceived positively by victim participants but which do not conform to the central theory of restorative justice.⁵¹⁹ It would appear therefore that victim satisfaction appears to be highest within aspects of the process which contradict traditional restorative justice theory. Furthermore, a strict adherence to traditional restorative justice philosophy appears to emphasise elements which are not desired by participating victims. The commodification of restorative justice and the selection of individual elements of the theory by those ‘culture carriers’ may increase victim satisfaction, if those elements of the theory desired by victims are carried through into the criminal justice system. Through examination of these key aspects a lack of understanding possessed by victims is demonstrated, reiterating the conclusions within chapters one and two regarding the practical implications of an absence of clarity regarding restorative justice.

Data collected during the course of this research suggests that those positive experiences of restorative justice recorded by participating victims are premised upon a relatively flawed understanding of core restorative values, demonstrated in the previous chapter which demonstrated victim participants continued emphasis upon punitive outcomes, a desire for formality and the overlay of court imagery upon the restorative process. The fact that victim participants value aspects of the process which cannot be recognised within restorative justice’s core values is compounded by a lack of clarity regarding restorative justice theory, the continued proliferation of varied practices operating within the (somewhat erroneous) label of restorative justice,⁵²⁰ compounded by the commodification of restorative justice theory.⁵²¹ This contributes to the continued absence of a clear, comprehensive definition of restorative justice and a persistent latent ambiguity of the concept. Subsequently

⁵¹⁹ See Chapter IV, Section 3 and 4.

⁵²⁰ Hudson, B., (1998). Restorative justice: the challenge of sexual and racial violence. *Journal of Law and Society*. 25 (2), 237-256; Ward, T., & Langlands, R. Restorative justice and the human rights of offenders: Convergences and divergences. *Aggression and violent behaviour*, 13, 2008, 355-372.

⁵²¹ Previously discussed within Chapter I

practices described as delivering restorative justice often do not accord with those core elements of the theory.

Whilst refraining from normative judgment, it is apparent that the processes implemented cannot be said to align with true restorative justice theory, but rather represent the idea of restorative justice becoming mutated in pursuit of existing criminal justice policies.⁵²² Examining this from a wider perspective the restorative practice within which this research was conducted illustrates the commodification of restorative justice in the service of existing paradigms and objectives of the criminal justice system. Data generated during this research suggests that those aspects of ‘restorative justice’ practice which are valued highly by victim participants do not appear to represent the accurate delivery of central restorative justice theory, but rather that they appear to mirror the more traditional elements of the criminal justice system.

Despite the preparatory meetings undertaken with all participants prior to their involvement in the restorative justice meeting it appears that victims desires for the process were more aligned to the traditional retributive criminal justice process. These persisting desires which remained despite preparation operated to lower victim satisfaction with the process, particularly when those aspects of restorative justice theory were enforced, such as the decision making role of the victim. This is illustrated in victim comments including:

“I didn’t like having to make that final decision...I wish I hadn’t been asked...that it wasn’t part of the process.” [Interview-A004].

Important gaps result from those assumptions by advocates that victims and offenders have the skills necessary to meaningfully participate in restorative justice. In reality participants are often incapable of fully understanding the meaning and focus of restorative

⁵²²Zernova, M. (2007) Aspirations of restorative justice proponents and experiences of participants in family group conferences. *British Journal of Criminology*, 47 (3), 491-509.

justice philosophy in addition to their abilities to express themselves.⁵²³ This has the potential to impact upon the development of accurate expectations regarding the process in which participants engaged. Whilst such gaps between theory and practice are identified within previous research,⁵²⁴ exploratory investigation into the reasons for such a discrepancy is somewhat neglected,⁵²⁵ with studies repeatedly identifying the inadequate preparation of participants as being responsible.⁵²⁶

i. Formality

A common criticism of the restorative justice process identified by victims was the apparent lack of formality within the process. Victims specifically identified the lack of formality within the process as resulting in negative experiences as they expected a formal court based process.⁵²⁷ A minority of victims who realised the informal nature prior to their experience nevertheless still rejected the informality as undesirable when compared to a more formal set up. This section explores two theories which may offer some explanation for the existence of victim desires of greater formality when engaging in restorative practices. Firstly, the potential for erroneous expectations to impact upon victim experiences is identified, leading to discussion later within this chapter, of the abilities to manage victim expectations. Secondly, and arguably of greater significance, victim's apparently normative determinations rejecting informality in favour of more formal mechanisms of justice and the

⁵²³ Daly, K. (2003). 'Mind the Gap: Restorative Justice in Theory and Practice'. In A. von Hirsch, J. Roberts, A.E. Bottoms, K. Roach & M. Schiff (eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?*, pp. 219–36. Oxford: Hart Publishing.

⁵²⁴ Daly, K. & Immarigeon, R. (1998). The Past, Present, and Future of Restorative Justice: Some Critical Reflections. *Contemporary Justice Review*.1: 21-45.; Hayes, H., & Daly, K. (2004). Conferencing and Re-offending in Queensland. *Australian and New Zealand Journal of Criminology*, 37(2):167-191.

⁵²⁵ Daly, K. (2006). The limits of Restorative Justice. In D. Sullivan & L. Tifft (eds.), *Handbook of Restorative Justice A Global Perspective*. pp.134-143. London and New York: Routledge Taylor & Francis Group.; Blecher, N., (2010). Sorry Justice: Apology in Australian Family Group Conferencing. *Psychiatry, Psychology and Law*. 18(1), 95-116.

⁵²⁶ Shapland, J., Robinson, G. & Sorsby, A. (2011). *Restorative Justice in Practice, Evaluating what works for victims and offenders*. London: Routledge.; Shapland et al. (2007) *Restorative Justice: The Views of Victims and Offenders*.

⁵²⁷ Discussed further within Chapter IV, section 3, ii.

potentially significant impact upon the delivery of restorative justice practices are explored. This normative opposition to informal resolution is reflected in statements which were regularly expressed throughout the qualitative interviews, such as:

“It was all too friendly ... it lost sight of why we were there...that a crime had been committed and it was serious it needed to be more formal, like a court or police station...” [Interview-A016].

This negative assessment of the informal nature of the process is surprising, particularly when viewed in the context of multiple theorists focussing upon the beneficial potential for participants resulting from restorative encounters. Hayes suggests that a highly formalized artificial structure may adversely impact the manner of expression by offenders who drift from apologetic discourse to mitigating accounts;⁵²⁸ however such a formalised structure is actively desired by the majority of victims in this research.

Advocated by restorative justice theorists,⁵²⁹ the informality of restorative practices was specifically identified as less desirable by victims participating within this research, as documented within the preceding chapter.⁵³⁰ This negative perception towards the less formal is demonstrated through two perspectives, firstly the negative perspectives victims viewed informal mechanisms and secondly through examining victim reaction to the more formal elements of the process or their reaction to those occasions where the formality of the process was increased. An example of this second, alternative perspective regarding victim desire for formality can be seen through one participant's comments describing their (in these quotations male) restorative facilitator as:

⁵²⁸ Hayes, H. (2006). A cooperative system of justice: restoring justice for offenders and victims. In S. Hayes, N. Stobbs & M. Lauchs (eds.) *Social Ethics for Legal and Justice Professionals*, pp.378-379. Pearson Education Australia.

⁵²⁹ Strang, H. (2002). *Repair or Revenge: Victims and Restorative Justice*.; Wheeldon, J. (2009). Finding common ground: restorative justice and its theoretical construction(s), *Contemporary Justice Review*. 12 (1): 91-100.

⁵³⁰ Lower satisfaction was recorded with informal aspects of the process, documented in Chapter IV, Section 3, i.

“...really good...like an ex-teacher, he knew how to keep control...to keep them [offender] in place...” [Interview-A008].

“He’s a good disciplinarian...they couldn’t just sit there and say what they wanted, like nothing...he made them sit up, straight and speak properly ...to everyone...he kept an order over the whole meeting” [Interview-A018].

Indeed, whilst this lack of authority within restorative practices leading to negative experiences of participating victims is recorded within extant research,⁵³¹ the potential underlying cause of this phenomenon remains unexplored. Victims’ preference for a more formal restorative justice process,⁵³² appear to emanate from their continued comparison and reliance upon the traditional courtroom processes, perceiving formality as being of intrinsic value. Upon their initial assertion that the lack of formality was less desirable the majority of victims immediately clarified this by stating that they expected more formality, and that the informal structure was a surprise to them, that it was unexpected:

“I would have preferred the Panel to be more court like and less of a conversation...” [Interview-B008];

“I didn’t like the informal setting ... we’d spoken about it so I knew that was how it would be done but it didn’t make me feel any better about it...” [Interview-B011].

However, not all victim participants who rejected the informality of the process did so due to erroneous expectations. Some respondents stated that despite their awareness of the informal nature of the process, they would have preferred greater formality. Victim

⁵³¹Umbreit, M. (1994). Victim sensitive communication with offenders: A restorative justice continuum Victim Offender Mediation. *The journal of the International Association for Victim Offender Mediation*. 5(3): 7-8.; Umbreit, M. (1994). Crime Victims Confront Their Offenders: The Impact of a Minneapolis Mediation Program. *Journal of Research on Social Work Practice*. 4(4):436-447.

⁵³² As the previous chapter (IV) clearly identified

comments appear to indicate a deeper rooted rejection of the informality often advocated by restorative justice theorists, such as:

“They [facilitator] said it would be like that [informal] but I really didn’t like it, I knew that was how it would be done but it didn’t change how I felt about it...” [Interview-A004]:

“It should be more formal, it’s a serious thing so it should reflect that...I didn’t like the layout or the atmosphere...far too friendly....I was told it would be like that...but that doesn’t help really” [Interview-A017]

In particular, victims’ comments addressing the purpose of the entire restorative process (as perceived by the participating victim) would suggest that, for those individuals at least, formality represents a central feature essential to the function of the process:

““yes it’s important that the Policeman was there ... I mean it gives the whole process more authority, I’m not sure I would have participated in the Panel if I had known that there would not be a PC present...” [Interview-A016].

The data collected and presented within this research suggests two distinct concepts which may offer some explanation behind victims’ desires for formality and their rejection or disappointment with the more informal aspects of the process. Firstly, their expectation of formality, it is clear from some statements that victims possessed an erroneous expectation that the process will be formal and replicate, to some degree the traditional court process. This discrepancy between participants’ expectations and reality and its subsequent impact upon their experience is recognised within extant literature to some extent through discussion of the essential nature of the preparatory stages, discussed in greater detail later within this chapter. However, some victims possess normative judgements within their assessments of the formality within the process (or its lack of formality). Victim participants stated that their disappointment and negative experiences resulted from the informal aspects of the restorative

processes, which failed to fulfil their normative desires of ‘justice’ and ‘seriousness’. They suggested that the purpose of the programme (as a response to criminal actions) and the reason for their engagement could only be fulfilled through a formal justice process.

“It should have been far more formal...it’s a crime after all ... it *was* a serious matter and the formality should be there, to show that it was a serious crime and should be treated as that” [Interview-A024] (original emphasis).

This is further supported in those comments made by victims when describing their beneficial assessments of the more formal aspects of the restorative conferences,⁵³³ which whilst contradicting those claims of restorative theorists that informal justice can fulfil victims needs which the formal justice system cannot, they additionally suggest that victims’ desire for formality remains a necessary condition for successful conclusion of such processes:

“I was glad the police were there, it gave the meeting some authority which was really important for me, after all it was meant to be the same as a court case ... without the police it was really too relaxed...casual...it needs to be more formal” [Interview-B009].

It would appear therefore that the inclusion of a Police presence within the restorative meeting illustrates the commodification of restorative justice theory and the selection of elements of restorative theory by those culture carriers within each practice (previously discussed within Chapter 1). Whilst numerous theorists emphasise the informality of restorative justice and the removal of traditional agents of criminal justice and social control, it would appear that those elements are not carried across into contemporary practice allowing those elements of formality to be replicated throughout the restorative practice.

⁵³³McNeill, F. & Whyte, B. (2007). *Reducing Re-offending: Community Justice and Social Work in Scotland*. Cullompton, UK: Willan Press.

Furthermore, a highly scripted process is identified within existing literature as potentially allowing for domination of the process by particular participants.⁵³⁴ However a significant number of victim participants identified the scripted process as being important in maintaining balance between participants (although this was not always appreciated by victims who felt they should be distinct from offenders within the process). This appreciation of the script utilised in the restorative meeting is demonstrated through a significant number of victim participants commenting that:

“...I liked the questions they [facilitator] were using ... it kept control of the whole meeting...gave it some structure like you knew what it would be like...a bit like a court, with everyone having their turn to talk when they should...in order...” [Interview-B004].

But the extent to which the majority of victims disliked the equality resulting from close adherence to the restorative script by the facilitator is reflected in statements including:

“It was a bit too well I wanted there to be clear space between them [offender] and me....I mean I was the victim and they had done wrong but we were treated the same almost, asked the same questions and everything...I didn’t like that...when they were asked who had been hurt the chair suggested their [offender] mother...but at the end of the day that should be me, I’m the victim...they hurt me...” [Interview-A007].

Furthermore, this desire for formality among victims extends to the actions of the offender during the process. Victims repeatedly criticized the language utilised by offenders as often being evasive or disrespectful:

“they didn’t say anything really did they ... just mumbled or kept saying ‘whatever’ as if they didn’t care what they were talking about...I don’t think it

⁵³⁴ Hayes, H. (2006). *A cooperative system of justice* ; Gerkin, P. (2009). Participation in Victim—Offender Mediation: Lessons Learned From Observations. *Criminal Justice Review*. 34(2), 226-247.

really sunk in until the facilitator stepped in and made them talk properly...”

[Interview-A011] and:

“...he [offender] didn’t even look at me when he was speaking...he [offender] just mumbled and looked down ... like he wasn’t interested in the panel at all...” [Interview-B004].

However, such communicative inference could be misguided as those responses offered by offenders during the restorative justice processes observed by the researcher appeared genuine in content, but were delivered in an informal manner more similar to the communicative standards expected of young adolescents not familiar with more formal situations and associated vocabulary.⁵³⁵ These comments however are illustrative of an expectation-reality gap which exists among victims participating in this research. It is argued within this thesis that such expectation-reality gaps can impact negatively upon specific aspects of victim experiences of the restorative process, whilst remaining undiscovered within previous research due to its reliance upon quantitative assessment of objective measurements and service delivery criteria.

Similarly their demeanour and posture was also identified as a negative aspect of the process when offenders did not appear to behave as victims expected or desired them to. This is further emphasised through the positive comments made by victims when steps were taken by the facilitator to modify these behaviours, in a manner clearly not reflective of an informal context in which all participants are treated equally.⁵³⁶ Together, the data presented above appears to at least question and even directly contradict those claims that “lay orientation ...is essential when conflicts are seen as property that ought to be shared ...Let us reduce

⁵³⁵ Young, R. (2002). Testing the Limits of Restorative Justice: The Case of Corporate Victims. In C. Hoyle, & R. Young, (eds.), *New Visions of Crime Victims*, p. 133-172. Oxford: Hart Publishing.; Braithwaite, J. (1999). Restorative Justice: Assessing Optimistic and Pessimistic Accounts. *Crime and Justice*.25, 1-127.; Daly, K. (2000). *Revisiting the Relationship between Retributive and Restorative Justice*.

⁵³⁶ Kurki, I. (2000). Restorative and Community Justice in the United States. *Crime and Justice: A Review of Research*, 27, 235-303.; McEvoy, K. & Mika, H., (2002). Restorative justice and the critique of informalism in northern Ireland. *British Journal of Criminology*. 42, 534-562.

specialisation and particularly our dependence on the professionals within the crime control system...”.⁵³⁷ It is suggested that such inconsistencies with theoretical literature and the empirical data of this study may result from the existence of an expectation-reality gap, arising from the continued limited understanding possessed by victim participants.⁵³⁸

ii. Formality and authority: the presence of the Police or a PCSO

Victim desires for formality throughout the restorative justice process and their negative experiences associated with its informality resulting from the expectation-reality gap are reflected within comments made regarding the presence of the police. Repeatedly identified as being crucial by participating victims, a police present during the restorative meeting was often received positively by victims, repeatedly stating that:

“... With the P.C.S.O. there it’s an authority figure in a discussion group and I think that had more effect....” [Interview-A007]:

“... it’s important that the policeman was there... it gives the whole process more authority, I’m not sure I would have participated in the panel if I had known that there would not be a PC present ...” [Interview-A005].

However, a small minority of victims recorded negative experiences resulting from the police presence, specifically where the individual present was a Police Community Support Officer and not a Police Constable. It is suggested that those negative experiences arise from the expectation-reality gap, with victim participants expecting a police presence, but recognising the professional differences between a PC, PCSO and Special Constable.

Within this research all victim participants stated that a police presence throughout the restorative justice meeting was essential. This was clearly identified within the preceding

⁵³⁷ Christie, N. (1977). Conflicts as Property.

⁵³⁸ Choi, J., & Gilbert M., (2010). 'Joe everyday, people off the street': a qualitative study on mediators' roles and skills in victim-offender mediation. *Contemporary Justice Review*. 13(2), 207-227.; Choi, J., Bazemore, G., & Gilbert, M., (2012). Review of research on victims' experiences in restorative justice: implications for youth justice. *Children and Youth Services Review*. 34, 35-42.

chapter. Additionally, statements made during the qualitative interviews suggest that such a police presence contributed directly to positive perceptions of the restorative justice process following its completion. This is reflected in comments such as:

“I think it was good that there was a clear police presence... I don’t think that it would have worked as well without the police there... and I don’t think I would have taken part...” [Interview-A014]:

“Yes it’s important that the Policeman was there ... I mean it gives the whole process more authority, I’m not sure I would have participated in the Panel if I had known that there would not be a PC present...” [Interview-A005].

However, a clear discrepancy arose between victim participants who identified the police presence within their restorative meeting as being a Police Community Support Officer, as opposed to a Police Constable. Whilst all participants identified the police presence as an important factor of the process several victims expressed negative attitudes towards PCSO’s attendance as opposed to Police Constables. When explored further, those victims who saw the presence of a PCSO in a negative context identified their lack of authority as a main concern, stating that:

“...with all due respect a PCSO isn’t really the same as a police officer...they don’t have the same powers or authority and they [offender] know that....they’re [PCSO] seen more as traffic wardens than police figures and I wasn’t happy that only a PCSO was there not a police man” [Interview-A005].

Furthermore, it would appear that those victims who expressed negative attitudes towards the attendance of a PCSO as opposed to a Police Constable fully expected there to be a police presence during the restorative justice process, but that such a presence would be manifested through the attendance of a Police Constable. The surprise which those victims experienced once realising that the officer present was not a Constable but a PCSO with intrinsically restricted powers supports the argument of this thesis that expectation-reality gaps can impact

negatively upon victim experience. Victim participants who did not distinguish between the PCSO and the Constables, in addition to those who's restorative justice meeting was attended by a Constable did not report such concerns and subsequently recorded a more positive perception of the police presence and their experience in the restorative process.

Initially, this would appear to demonstrate those assertions that negative experience within restorative justice processes arise when participants, due to lack of preparation, experience aspects of the process which are unexpected. However, the negative reaction resulting from the attendance of a PCSO as opposed to a Police Constable cannot be said to be exclusively a result of unfulfilled expectation, as a significant majority of victims were clearly made aware of the possible attendance by a PCSO but still expressed negative comments when discussing the police presence. This is further emphasised within the statement that:

“I was told that it would be a PCSO and to be honest I'm not happy about it...it's not the same as a police man...not really anyway and I think it gives less authority to the process if its seen as being only a PCSO....I wanted a PC there” [Interview-A009].

Such data indicates that whilst unfulfilled expectation, or indeed lack of preparation resulting in surprises may offer some explanation into the negative perceptions recorded by victims regarding the presence of the police during the restorative justice process, there is a deeper contributory factor emanating from the perceived authority of the process, and the apparent lack of authority or severity which PCSO's and an informal setting may create. This continued desire for formality or severity within the process is reflected in responses including:

“yeah I knew it would be like it was...too friendly and everything from what they [facilitator] said in the meetings ... but I don't think that is enough ... it should be more formal, court like with police and everyone there for a

reason...and that reason, the crime should be made more obvious...it was sort of skimmed over I thought...” [Interview-B014].

This suggests that in some cases, the participating victim was aware that the attendee would likely be a PCSO and not a Constable; however this appeared to have little impact upon their negative experience. Furthermore, whilst the presence of the Police appears to contradict the informal aspirations of restorative justice theorists, a significant majority of victim participants, when explaining their desire for a police presence during the restorative meeting resorted to comments “remind why we’ve there” – contradicting the philosophy that such labelling and prescribed roles of offender etc. be avoided. Many victim participants saw the police presence as an essential factor in their decision to engage with the restorative justice scheme. However, whilst all victims desired a police presence, few victims were able to distinguish between the attendance of a police constable and a PCSO. Those victims who made no reference to the position of the attendee, as being either a PCSO or a Constable, all recorded positive experiences from the police presence. However, it would appear that those (small numbers) of victims who did record negative experiences resulting from the presence of the police relied exclusively upon the apparent lack of authority which is possessed by a PCSO when compared to a Constable. This is demonstrated in comments such as:

“I think it’s really important having a police officer there, otherwise it’s just like sitting with a civil servant...I wasn’t happy with it” [Interview-A010].

It is apparent therefore that the source of victims’ negative experience, in relation to the police attendance during restorative meetings emanates from a perception of a deficiency in authority, their lack of coercive powers and the subsequent impressions offenders may adopt:

“if they’re [offenders] street smart they know the difference of a PCSO and a proper PC...and I don’t think they [offender] take much notice of the PCSO’s ... if it’s meant to be like court where’s the authority coming from...it’s got to

be a Police man there to make them [offender] sit up and take notice”
[Interview-A005]

Whilst those victims who appeared capable of distinguishing between Police Constables and a PCSO expressed disappointment at the presence of the latter due to their expectation of the former's presence, this also reflects a more significant desire. When questioned further, those victims who viewed the PCSO's presence negatively responded with statements regarding the authority possessed by a PCSO when compared to a Police Constable, relating directly to their powers of arrest. This perceived lack of authority relates directly to those discussions surrounding informality within restorative justice and a departure from the impersonal formal constraints of the traditional criminal justice system.⁵³⁹ It would appear therefore that the negative perceptions held by some victim participants regarding the presence of a PCSO during restorative meetings undermines those claims that informal processes are preferable and indeed desired by victims.⁵⁴⁰ This demonstrates a clear rejection of that aspect of restorative justice theory by victim participants, not adequately discussed within extant literature. Again a police presence throughout the restorative meeting would appear to contradict many of the central features of restorative justice including informal conflict resolution,⁵⁴¹ stakeholder empowerment,⁵⁴² and re-integrative shaming.⁵⁴³ However, it supports those theories developed within Chapter I regarding the commodification of restorative justice philosophy and the selection and exclusion of aspects of that theory by ‘culture carriers’ within each restorative practice. Within the practice upon

⁵³⁹McAlinden, A. (2011). ‘Transforming Justice’: challenges for restorative justice in an era of punishment-based corrections. *Contemporary Justice Review*. 14 (4), 383-406.; Morris, A., Maxwell, G., & Robertson, J. (1993). Giving victims a voice: A New Zealand experiment. *Howard Journal of Criminal Justice*, 32, 304 – 321.

⁵⁴⁰Olson, S. and Dzur, A. (2004). Revisiting Informal Justice: Restorative Justice and Democratic Professionalism. *Law and Society Review*. 38(1), 139-176.; Bottoms, A. (2003). Some Sociological Reflections on Restorative Justice. In A. von Hirsch, et. al., (eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (pp. 79-114). Oxford and Portland, Oregon: Hart Publishing.; Roche, D. (2003). Restorative Justice and the Regulatory State in South African Townships. *Justice Reflections: Worldwide papers linking Christian Ideas with Matters of Justice*. Issue 3 (JR 13-20).

⁵⁴¹Woolford, A. & Ratner, R. (2007). *Informal Reckonings Conflict Resolution in Mediation, Restorative Justice, and Reparations*. London: Routledge.

⁵⁴²Christie, N. (1977).

⁵⁴³Braithwaite, J. (1989). *Crime, Shame and Reintegration*, New York, NY: Cambridge University Press.

which this research focussed the inclusion of the police appears to be an important element regardless of its apparent incompatibility with traditional restorative justice theory identified within Chapter 1.

iii. Repeated emphasis upon punitive outcomes

One aspect of victim experiences in the restorative justice process which is of significant note (identified within the preceding chapter) was the continued emphasis upon punitive elements of the process, resulting in relatively negative experiences when those punitive aspects and outcomes are sacrificed in pursuit of restorative principles. Victim participants repeatedly identified those aspects capable of satisfying punitive desires as being of benefit when assessing their experiences. This is demonstrated by statements including:

“it was good that you could teach them a lesson, so that they [offender] knows not to do this again...” [Interview-B016]:

“They [offender] needed to have something unpleasant to do, its fine looking forward but what they did is just as important...” [Interview-B008].

Furthermore, those negative experiences reported by victims when such punitive desires were not fulfilled suggest that whilst being aware of what the process entailed prior to their experiences, some victim participants maintained punitive desires which, when unfulfilled, resulted in negative experiences. This is demonstrated in victims who reported negative experiences explaining their assessments by reference to their inability to enforce those punitive aspects more relevant to the traditional criminal justice system:

“I wasn’t happy really with that decision [the outcome] it doesn’t really make them [offender] do anything, just stay inside at night for a bit I thought it should have been to put all the damage right after what they did, clean and

repair it all or do something else to teach them a proper lesson....” [Interview-B006].

It would appear that those desires and victim’s appreciation for these punitive aspects and outcomes demonstrate an erroneous understanding of what restorative justice processes can deliver. Such an erroneous understanding could be accorded to poor preparation, as is often identified within extant literature, however participants within the restorative process in which this research was undertaken all underwent an extensive preparatory stage which comprehensively detailed the process in which they were engaging. This preparation was seen by the significant majority of victims (90%) reported feeling either ‘fully prepared’, ‘very well prepared’ or ‘well prepared’ for the restorative process (previously detailed within chapter three). Thus, rather than representing an expectation-reality gap which resulted in victims reporting negative experiences of the restorative aspects of the process, and perceiving aspects which allowed for retributive responses as beneficial, this represents the persistence of retributive desires despite the extensive preparatory meetings. This is supported within comments made by victims that accurately captured the restorative process in which they were engaging, whilst maintaining those retributive desires which do not accord with restorative justice principles. For example, [Interview-A023] described the process as:

“something where we can look to how we can move forward with everything” whilst maintaining the most beneficial aspects of the process was its ability to “teach them [offender] a lesson” and “give them what they desert...some sort of hard work or something....” [Interview-A023].

The extent to which punitive desires survive throughout victim participation in restorative practices, documented in the preceding chapter, is of significance as it questions the ability of restorative justice to deliver the theoretical assertions made by restorative advocates to improve the victims’ role and experience with the criminal justice system. If

victims appear incapable of, or reluctant to fully accept and embrace restorative theory, departing from the traditional notions of retributive justice and punitive responses, the extent to which they are able to realise those repeatedly cited benefits of restorative justice remains unresolved.

This persistence questions the extent to which victims are refusing to relinquish their retributive desires due to a specific rejection of restorative justice theory, or potentially it may demonstrate the difficulties and obstacles faced by restorative justice when it is implemented within the context of the traditional criminal justice system, and is presented against a backdrop of a justice system and society governed by retributive principles. This potential explanation for victims' persisting retributive desires reflects discussion regarding the implementation of non-custodial sentences and their negative reception when implemented against the ever present shadow of custodial prison sentences.⁵⁴⁴

The persistence of retributive desires are demonstrated in areas within which victims appeared relatively satisfied and reported positive experiences, but followed up their assertions with observations that the process could be improved if those punitive desires were fulfilled. This is demonstrated throughout victim participant responses such as:

“it was a good process...being able to see them [offender] and ask questions and stuff was really helpful ... but I do think it would be better if it were more formal, reminding us that they are the criminals ... with some hard outcome at the end and not just agreeing to not do it again ... where's the punishment in that”

[Interview-A031].

As stated, past empirical studies which established negative experiences of victims arising from their participation within restorative practices repeatedly identified their

⁵⁴⁴Tränkle, S. (2007). In the shadow of penal law: Victim offender mediation in Germany and France. *Punishment & Society*. 9(4): 395-415.

inadequate preparation and the expectation-reality gap as being responsible for these detrimental experiences. However, within this research, victims appeared to demonstrate a full awareness of restorative philosophy, stating that they were fully aware of what to expect from the process and were capable of identifying central features of restorative justice philosophy. Those victims however, whilst acknowledging specific aspects of the process which correspond with restorative justice theory and fulfil its central objectives, continued to express negative sentiments towards the inability of the process to satisfy their more retributive desires. This is evidenced within victim statements such as:

“Having everyone involved in making that final decision [outcome] was good, but I really thought it should have been more formal....they are the offender, they have done wrong so really they should be told what they are going to have to do, not asked. I know it’s about moving forward and trying to sort out the future but they still need to be taught a lesson that what they did was wrong” [Interview-A003].

Throughout the data generated during this research victim participants appear reluctant to relinquish those desires best described as retributive. In contrast to previous empirical studies which identify inadequate preparation as the reason for poor experiences, victim participants’ reluctance to relinquish punitive desires within this research persists despite the extensive preparation of each individual. Again, the apparent availability of somewhat punitive outcomes which satisfy victim participant’s retributive desires would appear incompatible with many elements of restorative justice theory, however it is submitted that this again represents the extent to which specific aspects of the umbrella concept of restorative justice is commodified and individual elements of the theory carried across to the criminal justice system in which the individual restorative practice operates.

iv. Restorative Justice and Victim Responsibility

Another unexpected result recorded within victim experiences of the restorative justice process was their negative attitude towards assuming a position of decision making responsibility, with regards to the final outcome of the meeting. Such findings are significant due to the empowerment of stakeholders through according them a decision making role being repeatedly identified as an essential element of restorative justice philosophy.⁵⁴⁵ The rejection of victim empowerment by is possibly the clearest example of the commodification of restorative justice philosophy by the individual practices. The reluctance to incorporate aspects of victim empowerment through according them a decision making role during the restorative justice practice by those culture carriers illustrates the extent to which aspects of traditional restorative theory can be departed from within contemporary practice.

To some extent the negative experience recorded by victims which resulted from the request to perform a decision making role may, to some extent, again represent the impact of a gap between victim expectation and the reality of a restorative justice meeting. Certainly, a small minority of victims who recorded negative feelings towards this aspect of the process, specifically being asked what an appropriate outcome for the offender should be, referred to the unexpected nature of the request when describing the impact it had upon their overall experience of the restorative justice process. Such theory is demonstrated in statements including:

“I don’t think I wanted to make that decision, I was surprised that I was asked to if I’m honest ... I mean I don’t know what I could ask them [offender] to do, but the facilitator or policeman does so it’s better they make the decision...”

[Interview-A031]:

⁵⁴⁵Christie, N. (1977). *Conflict as Property.*; Zehr, H. (2001). *Changing Lenses.*

“It made me feel very uneasy awkward even...I wasn’t expecting to be asked that so I hadn’t thought about what to say they [offender] should do even if I had thought about it I don’t know if I could ever think of something ... I mean I don’t know what you could even ask them to do...” [Interview-B013].

This suggests that where a gap exists between participant expectations and the subsequent reality of restorative justice processes, it impacts detrimentally upon victim experiences of the process. Again, whilst this is documented within previous empirical research which identifies the preparatory stages of restorative justice practices as being of crucial importance, due to their ability to reduce this expectation reality gap,⁵⁴⁶ such studies do not explore alternative reasons for this negative experience or rejection of restorative philosophy beyond that erroneous expectation resulting from inadequate preparation. Such findings hold particular relevance for those restorative practices which engage in the commodification of restorative justice philosophy, as the process in which victims participate may be incapable of acquiescing to their expectations due to the exclusion of those relevant aspects of restorative philosophy by the culture carriers within the individual practice.

Whilst some participants within this research allocated their negative experiences resulting from their surprise at being asked to assume a decision making responsibility, a significant number of participants stated that whilst they were aware that they would be required to assume a position of responsibility, they still reported this assumption as resulting in a negative experience. This is also demonstrated through the preparation which victims received prior to their engagement, which repeatedly emphasised the features of restorative justice and the interaction and role which victims are intended to assume, occupying a

⁵⁴⁶Umbreit, M. & Coates, R. (2006). Restorative Justice Mediated Dialog. In M. Harrman (ed.), *Handbook of Mediation: Bridging Theory, Research, and Practice* (pp. 175-188). Blackwell Publishing.; Vos, B., Umbreit, M. & Coates, R. (2005). Victim Offender Mediation: Evidence Based Practice Over Three Decades. In M. Moffitt & R. Bordone (eds.), *The Handbook of Dispute Resolution* (pp. 455-470). Josey Bass Publishers.

decision making position with responsibility of determining the outcome of the restorative meeting.

The apparent negative experiences which victims report regarding their role in assuming decision making responsibility, questions the extent to which those elements described as central to restorative justice theory are those which directly contribute to those recorded beneficial experiences of victim participants. An essential and central feature of restorative philosophy is the principle of stakeholder empowerment,⁵⁴⁷ and if this feature relates directly to negative experiences being recorded by victims, which cannot be explained by reliance upon arguments of inadequate preparation, the ability of restorative justice to improve the position of victims within the criminal justice system and not merely relocate them is questionable.

Theorists suggest that in contemporary society, officials and state functionaries' are relied upon as the only alternatives for communication, collaboration and interaction following social disorder.⁵⁴⁸ Such claims may offer an explanation into victims' rejection of such decision making roles within the restorative process. Victims may continue to place reliance upon what were previously the sole mechanisms for such communication (formal professionals), resisting the opportunities offered during restorative justice practices to assume a decision making position in favour of deferring such decisions to the professionals, in this case the facilitator. It may merely illustrate that within a traditionally retributive justice system those individuals have relied upon those formal mechanisms for an extensive period of time that they are incapable or reluctant to embrace the opportunities for empowerment

⁵⁴⁷Hargovan, H. (2007). Restorative Approaches to Justice: "Compulsory Compassion" or Victim Empowerment? *Acta Criminologica*. 20(3): 113-123.; Hoyle, C. & Sanders, A. (2000). Police Response to Domestic Violence: From Victim Choice to Victim Empowerment? *British Journal of Criminology*. 40(1): 14-36.; Daly, K. & Curtis-Fawley, S. (2005). Restorative Justice for Victims of Sexual Assault. In K. Heimer & C. Kruttschnitt, (eds.), *Gender and Crime: Patterns of Victimization and Offending* (pp. 230-265). New York: New York University Press:

⁵⁴⁸Dzur, A. (2011). Restorative justice and democracy: Fostering public accountability for criminal justice. *Contemporary Justice Review*. 14(4):367-381.; Christie, N. (2004). *A Suitable Amount of Crime*. London, UK: Routledge.

offered by restorative justice practices. Such theories therefore question the extent to which those seminal arguments which established the current interest in restorative justice philosophy accurately depict restorative practice and its true impact upon participants, appearing to reject arguments that conflict resolution should be located within stakeholder deliberations and those stakeholders would benefit from such resolution.

However, within this research, whilst some victim participants desired the facilitator assume the decision making role regarding the outcome of the meeting for the offender, crucially this was not reported by every victim. A significant number of victims stated that they did appreciate the opportunity to fulfil this role within the restorative process:

“I think it’s good that you are in charge of that...it’s better that the chair [facilitator] asks you, they may suggest something but it’s your choice and I think that is important...” [Interview-A004].

This further questions which factors contribute to victim assessments of their experiences, as whilst awareness and expectation offers some explanation into their positive and negative experiences, it is clear that mere awareness is not the sole reason for victims negative experiences. Additionally, from victim participants’ comments regarding their role as a decision maker during the restorative justice process, some victims actively avoiding such a position, but others appreciated the opportunity it provided. It would appear that the theoretical claims of restorative justice not universal, being applicable to all participants, but rather are met with varying degrees of appreciation.

Furthermore, within those individuals who stated that the opportunity to determine the outcome of the restorative process was beneficial, it was often not the victim alone who decided upon the obligations which the offender would undertake. Within those comments that perceived decision making responsibility positively, the outcome itself was often a product of both the victim and facilitator, with the victim suggesting an obligation and the facilitator setting what was perceived as being an appropriate length of time for those

obligations to operate. This interaction however was often not acknowledged by victim participants, who continued to perceive themselves as occupying the sole decision making position within the restorative process. This is illustrated in the comment:

“They [facilitator] gave some suggestions but I didn’t really agree at the end of the day it was my decisions what needed to be done and I said that...”

[Interview-A010].

Despite the rejection of this central aspect of restorative justice theory, other aspects of the process were met with relatively high levels of satisfaction. This supports the assertion of this thesis that ‘high levels of satisfaction’ previously recorded within quantitative research studies are the product of numerous, complex experiences not readily apparent within quantitative data. Furthermore, it would appear that within the empirical data of this study victim participants reported positive experiences of the restorative process in spite of not assuming a decision making role. This reporting by participants of a beneficial experience in spite of lack of input is explained, to an extent, through victims’ statements that the ability to decide the outcome itself was not of central importance in their case. This lack of importance accorded to formal decision making additionally questions the underlying assumptions of restorative justice theory, suggesting an inverse relationship between restorative theory and victim experience. Whilst it asserts that victims benefit from the assumption of such a role, within the data of this research in addition to previous empirical studies, victims do not appear to desire such a role and in some cases seek to avoid that responsibility. The subsequent negative impact that enforcing this role upon victims cannot be explained through reference to inadequate preparation alone, as many participants within this research entered the process being ‘fully prepared’ and with full awareness that a decision making role awaited. The contributing factors, operating in addition to potential inadequate preparation, resulting in victims’ negative reactions to this aspect of their restorative justice process therefore requires further exploration, rendered problematic due to the reductivist approach to

past research and an overemphasis upon simplistic measurements such as victim satisfaction. This is reflected in comments including:

“No ... such a [decision making] role so it wasn’t of any great importance to me....it was more important that I was able to have my say...” [Interview-A026]:

“I’m glad the chairman decided what was agreed to at the end, I mean he listened to what I wanted but he made the decision about what they [offender] would have to do. I wouldn’t have wanted to do that myself” [Interview-B011]:

“...no I didn’t want to decide the outcome myself...it was much better the facilitator did...and I’m very happy with what was decided” [Interview-A029].

4. Offender actions and their impact upon victim experiences

This section examines victim statements regarding the actions and behaviour of offenders during the restorative justice process. Offender expressions of remorse and the offering of apologies are described as being central features of the restorative justice process,⁵⁴⁹ often being of great importance to victim participants.⁵⁵⁰ However, data collected during this research suggests that, contrary to such claims, victims do not appear to value offers of apology or expressions of remorse as highly as previously described. Victims do however focus upon the language and physical demeanour of the offender during the restorative justice process, often with negative connotations. It is suggested that this negative perception of offender behaviour emanates from victim rejection of the principles of informality often promoted within restorative practices. This desire for formality and

⁵⁴⁹Daly, K. (2008). Girls, Peer Violence, and Restorative Justice. *The Australian and New Zealand Journal of Criminology*. 41(1), 109-137.

⁵⁵⁰Blecher, N. (2011). Sorry justice: Apology in Australian family group conferencing. *Psychiatry, Psychology, and the Law*. 18(1), 95-116.; London, R. (2011). *Crime, Punishment, and Restorative Justice: From the Margins to the Mainstream*. Boulder, CO: First Forum Press.; Doak, J. (2011). Honing the stone: refining restorative justice as a vehicle for emotional redress. *Contemporary Justice Review*. 14(4), 439-456.

rejection of informality within restorative justice practices appears to extend to victim perceptions of the behaviour of the offender throughout the panel.

When discussing the impact of the offenders' behaviour, a large number of victims expressed positive attitudes towards facilitators who undertook active steps to increase the formality of the environment and their [offenders] actions. This is identified in victims' comments regarding their facilitator who controlled the restorative meeting, describing them as:

“He [facilitator] was really good, impressive. He made them [offender] speak up...clearly and not mumble or grunt like a yob ... he didn't let them dodge questions and made them sit properly, not sloughing and making them look at who they were speaking with...” [Interview-A023]

Such control of the posture and demeanour of the offenders is clearly not compliant with principles of informality and equality advocated by restorative justice theory.⁵⁵¹ This suggests again, that the informal context in which restorative justice theoretically occurs is not desired by victim participants, and a formal setting with appropriate formal behaviour is preferred. Thus, victim expectations appear to influence the subsequent experiences of victims, with any gap between victim expectation and realities resulting in a negative experience, those expectations which are held appear to depart from central aspects of restorative justice theory, such as the informal context in which the process is undertaken.

i. The importance of apologies

One aspect of significant note within data collected for this research is the apparent low level of importance which victims allocated to their offenders apology during the restorative process. A major concern within existing literature is that in some cases victims may be

⁵⁵¹ Becker, H. (1963). *Outsiders.*; O'Connell, T., Wachtel, B., & Wachtel, T. (1999). *Conferencing Handbook: The New Real Justice Training Manual*. Pipersville, PA: The Piper's Press.

further harmed by what is intended to be a restorative process because of the offender's reaction towards them. As the actions of the offender cannot be guaranteed, there exists a tangible risk of re-victimisation resulting from the offender's action or poor implementation.⁵⁵² Detailed in the previous chapter, unlike the vast tranche of extant work which identifies the opportunities for offenders to offer apologies as being of great importance to both the principles of restorative justice and to those victims who engage with it, the proffer of such apologies was not perceived as being of central importance for victims. This, surprising discovery is illustrated in victim interview quotations such as:

"...it was almost more important to hear how it happened and that we weren't being picked for any reason that was good for peace of mindmore important than an apology anyway' [Interview-A017] and again "I wasn't really bothered with an apology ... I mean even if you do get one you never know if it's real...I'd rather find out why they [offender] did it [the crime] and what they will need to do to make it right..." [Interview-B014].

This particular aspect of victims' experiences is of particular interest as it questions the extent to which mere fulfilment of expectations contributes to beneficial experiences within the restorative process. Victims are noted as stating that whilst they fully expected the offenders to apologise this again, did not feature strongly within their overall assessment of the process, suggesting that in cases where offender apologies were not forthcoming, this may not have the significant negative impact one would expect, following assertions within existing restorative theory.⁵⁵³

"I expected an apology at least an apology because that is how people act ... but that wasn't really important to me...I just wanted it to get fixed..." [Interview-

⁵⁵²Edwards I (2004). An Ambiguous Participant: The Crime Victim and Criminal Justice Decision-Making. *British Journal of Criminology*.44, 967.

⁵⁵³Etienne, M. &Robbennolt, J. (2007).Apologies and plea bargaining.*Marquette Law Review*. 91(1), 295-332.; Choi, J. & Severson, M. (2009)."What! What kind of apology is this?": The nature of apology in victim offender mediation.(Report). *Children and Youth Services Review*.31(7), 813-821.; Downes, K. (2009).A Reflection and Response to Using Criminal Punishment to Serve Both Victim and Social Needs.*Law and Contemporary Problems*. 72(2), 227-231.

A010]and again “I thought that they [offender] would definitely apologise...without a doubt ... but to be honest I was more concerned with why they [offender] did it....and what can be done about it....”

[Interview-B012].

ii. The relevance of remorse for victim experiences

In addition to offers of an apology, the expression of remorse by offender is repeatedly discussed within existing literature.⁵⁵⁴ The extent to which victims perceive offender remorse (whether genuine or not) is often described as of central importance for the purposes of restorative justice philosophy and the delivery of restorative outcomes such as victim empowerment, healing and closure.⁵⁵⁵ However, once again victim participants appear disinterested in the extent of remorse expressed by offenders, whether genuine or not, preferring to focus upon the more didactic elements of the process in delivering censure and prescribing reactions to the offence. These aspects which are valued are demonstrated in comments such as; “it was good that the chair reminded why we were there...that it was a crime and that something more than just saying ‘sorry’ was needed to make up for the offence... I wouldn’t have been happy with just an apology...” [Interview-A027] and again the apparent irrelevance of offender remorse is reflected in that statement; “for me it I was still happy even though I didn’t see, what I thought, was proper remorse, it may have been but it wasn’t obviously really. But that wasn’t important, although I always hoped they [offender] would be like that, I couldn’t really expect they would be...well you can’t expect how anyone will behave can you, unless you know them and not even then...” [Interview-A020].

⁵⁵⁴ *ibid*

⁵⁵⁵ Bennett, C. (2006). Taking the Sincerity Out of Saying Sorry: Restorative Justice as Ritual.*Journal of Applied Philosophy*. 23 (2), 127- 143.; Brownlee, K. (2010). Retributive, Restorative and Ritualistic Justice.*Oxford Journal of Legal Studies*. 30(2), 385-397.

Again, whilst the majority of victims appear to expect the offender to apologise and demonstrate some level of remorse, this does not contribute significantly to victim perceptions of the restorative process as being positive in nature. Offender displays of remorse, whilst acknowledged as good this does not appear to be of central importance in victim's assessments of the process and was often on the periphery of their considerations. This reflects analysis of data which suggests that half of victims who engaged in restorative justice indicated an apology did not help them feel vindicated or restored after the conference, despite it being central to restorative theory.⁵⁵⁶ This inability for apologies to offer any meaningful benefit to victims is explored through examination of the sincerity of such apologies, or lack of the remorse expressed by offenders.

A lack of sincerity is repeatedly employed within extant literature when attempting to explain those negative experiences recorded by victims within previous studies,⁵⁵⁷ however the results of this research indicate something different. The extent to which victim's negative experiences arise from a lack of offender sincerity, or from their disregard for the value of an apology remains unresolved. Whilst it is repeatedly claimed that a sincere apology from the offender is critically important if restorative outcomes are to be achieved,⁵⁵⁸ data collected in this research suggests that such an apology does not hold central importance for victims. This data could suggest that theoretical literature emphasising the importance of an apology is erroneous in that such apologies are essential for restorative outcomes, or alternatively that victims participating in restorative justice practices do not desire restorative outcomes. However, it would appear that the sincerity of such apologies, or those expressions of remorse by the offender, is of less importance to victim participants within this study,

⁵⁵⁶ Daly, (2003). *Mind the Gap: Restorative Justice in Theory and Practice*.

⁵⁵⁷ Morris, A. & Maxwell, G. (1993) 'Juvenile Justice in New Zealand: A New Paradigm', *Australian and New Zealand Journal of Criminology*, vol. 26(1), 72-90.

⁵⁵⁸ Achilles, M. & Zehr, H. (2001). Restorative justice for crime victims: The promise and the challenge. In G. Bazemore, & M. Schiff, (eds.), *Restorative community justice: Repairing harm and transforming communities* (pp. 87-99). Cincinnati, OH: Anderson Publishing Co.; Fercello, C., Greenwood, J., Umbreit, M. & Umbreit, J. (2000). *National Survey of Victim-Offender Mediation Programs in the United States*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime.

possibly due to their perception that actual remorse is unlikely to be seen, but those elements which could be controlled and were expected, specifically the behaviour and language of the offender, were seen as being important and were often referred to by victims when assessing their experience of the restorative justice process.

“I wasn’t really interested in their [offender] apology....even if it was sincere it wouldn’t have made me feel any different...for me, it was more important to find out why they did it, or that they won’t be able to do it again in the future...because of a curfew or something...” [Interview-A031].

This would suggest that the potential for any gap between victims’ expectations and the reality they experience is of greater significance than those elements focussed upon within extant literature. Furthermore, the extent to which those expectations or desires persisted throughout the preparatory stages of the restorative process appears to question the purpose or success of such preparation, often described within literature as being of central importance and crucial to the delivery of successful restorative justice practices. Despite the number of victims recorded as hoping that the offender would offer a genuine apology, the majority reported that they had no expectation that such an apology would realistically be offered. The impact resulting from an absence of apologies cannot be comprehensively addressed as within all restorative meetings from which victim interviews progressed, an apology was made. Subsequently any analysis of the impact of not receiving an apology despite expecting one is not capable utilising the data generated. However, the extent to which victim participants appear disinterested in apologies appears to suggest that their absence would not impact significantly upon the victim participants’ experiences.

iii. The value of enquiry and reassurance

The opportunities provided by the restorative justice process for victims to seek reassurance from the offender against future offences, or to explain the motivation behind their selection as a victim are repeatedly identified within both empirical and theoretical literature addressing the benefits of engaging in restorative justice practices for victims. These elements of the process were also identified as beneficial and important aspects of their experience by victim participants of this research. The opportunities for such interaction are clearly identified by victims as being both valuable and desirable, reflected in comments including:

“Just seeing them [offender] was worth it really, to know that they aren’t this career criminal or thug and that really it was just a mistake...that was a real benefit of the Panel...you don’t get other chances to sit opposite them [offender] and getting an explanation of the offence and why they did it...”
[Interview-A009]:

“Yes I would definitely tell others to consider this [the Community Justice Panel] if it were an option for them, the chance to have an explanation and to receive a remorseful apology are really important...” [Interview-A026].

The desire for explanations and reassurance within victims’ participants in this research corresponds directly with those central claims regarding the benefits of restorative justice advocated within theoretical literature, unlike their apparent rejection of informality and emphasis upon a formal nature of the process. It would appear therefore that victims are not rejecting all aspects of restorative justice theory, but are engaging with some, but failing to engage with others. Again, when explored further, the opportunities for explanation and reassurances against future offending were expected by those victim participants within the restorative justice programme. Within the preparatory stages of the process these elements were repeatedly emphasised and laboured by the restorative facilitator. This level of

expectation and the emphasis upon these aspects of the restorative justice process are demonstrated in comments that: “The meeting went well...I knew what to expect and was well prepared for it...nothing caught me off guard” [Interview-A024] and “I felt really prepared for the meeting...and that helped a lot because I knew what would happen and what I needed to do when I was in there...” [Interview-A016] and finally “those meeting beforehand with the chair are really good...they let you know how it’s going to go and what you can expect from it ... and its right too...” [Interview-A025]. This was also observed through direct observation of preparatory meetings by the researcher, in addition to analysis of distributed material detailing the work of the restorative programme. This however, questions the fact that victims appear willing to engage with aspects of restorative justice but reject other features of the approach. Whilst they are prepared by facilitators and are aware of the restorative process they report negative experiences with some aspects of restorative theory, favouring more traditional processes such as the formality of the process. Such mixed experiences cannot merely be explained by reference to the preparation of victims and a resulting expectation-reality gap, as even when such a gap is reduced or removed, victims continue to report negative experiences with aspects of the process which correspond with central restorative justice values. There would appear to be additional contributory elements impacting upon victim participants experiences of the restorative process.

5. Restorative principles and positive experiences: an inverse relationship.

From the data discussed above and within preceding chapters it would appear that victim experiences of restorative justice practices are complex and multifaceted, requiring detailed qualitative exploration to determine those factors which contribute to positive or negative assessments. Furthermore, the complexity of victim experiences of restorative practices is exacerbated through the commodification of restorative philosophy. The actions

of culture carriers in transposing specific aspects of restorative philosophy onto criminal justice disposals may impact directly upon victim understanding and subsequent experiences. Such detailed qualitative exploration conducted throughout this research suggests that an inverse relationship exists between central features of restorative justice theory, and those aspects of the process which are valued by victim participants in this study. Such arguments are demonstrated through victim dismissal of aspects of restorative justice which are described as being of central importance within extant literature, such as stakeholder determination and expressions of remorse, whilst valuing aspects which are inconsistent with restorative theory such as a focus upon punitive outcomes or procedural formality.⁵⁵⁹ Additionally, the extent to which each individual restorative practice carry those elements of restorative culture into their implementations will necessarily impact upon the experiences of victim participants, through influencing culture carriers understanding of the theory and subsequently influencing the extent to which they convey such understandings to victim participants.

Past literature asserts that participation within restorative justice holds universal appeal for victims and that the potential benefits are intrinsic to the implementation of restorative philosophy and that such participation is of benefit to stakeholders. Any questions regarding the relatively low levels of victim engagement, or empirical evidence indicating negative experiences resulting from participation in restorative practices are often the result of issues of implementation and practical considerations, such as poor preparation, rather than precipitating a critical re-examination of restorative justice philosophy and its espoused benefits regarding victims. Whilst the impact of restorative justice upon offender recidivism and rehabilitation are well documented, literature regarding the benefits of restorative justice for victims, beyond bare measurements of satisfaction, is limited. Indeed, this deficiency of clear, critical assessment of the impact restorative justice may have upon victims is reflected

⁵⁵⁹ Discussed within Chapter IV, section 3, i.

within theorist claims that “restorative justice hypothesis on victim benefits has been almost a theoretical afterthought.”⁵⁶⁰ Any claims regarding the universal appeal of restorative justice must be tempered with reference to contemporary practice of commodification.⁵⁶¹ The selection or exclusion of aspects of the restorative paradigm by the facilitators and coordinators within each practice (detailed in Chapter 1) necessarily results in different aspects of restorative culture being carried into the criminal justice system. The differences within each practice and the understanding conveyed by those culture carriers will inevitably have some impact upon the way in which victims experience the process.

Furthermore, there clearly exists a disparity between restorative justice theory and those aspects of the process which participants perceive as leading to positive and negative experiences. This disparity cannot be explained through reference to an inadequate preparation of participants, as previous empirical research suggests, as the preparation victim participants received prior to their engagement in the restorative practice upon which this research is focussed was both comprehensive, detailed and appeared to distil the necessary awareness and knowledge of restorative theory needed for victims to feel able to engage in the process. Restorative justice theory identifies specific aspects of the process which are depicted as being valued by victims, through resolving victim disempowerment and negative experiences. Specifically, this extant body of literature identifies the opportunities for victim involvement through facilitating victim-offender interaction, their empowerment through occupying a decision making position throughout the process and the informal nature of the resolution, free from domination by legal professionals.⁵⁶² However, from analysis of data collected in this research, victim participants repeatedly identify the very same aspects of the process as resulting in negative experiences, particularly the expectation for victim

⁵⁶⁰ Sherman et al (2005). Effects of Face to Face restorative justice on victims of crime in four randomised, controlled trials. *Journal of Experimental Criminology*, 1, 367-395.

⁵⁶¹ See Chapter 1 for a greater discussion of commodification and restorative justice theory.

⁵⁶² Christie, N., (1977). Conflicts as Property.

participants to assume a decision making role and the attempts to conduct the process within an informal atmosphere.

Significantly, from the data discussed previously the greatest divergence between restorative justice theory and victim experiences appears to represent an inverse relationship between those aspects of the process described by many theorists as ‘most restorative’⁵⁶³ and negative victim experiences.

i. Central features of restorative justice philosophy

Despite the continued debate regarding definitions of restorative justice,⁵⁶⁴ and its compatibility with retributive paradigms of justice,⁵⁶⁵ specific aspects have been identified which are identified as the basic constituent elements of restorative justice practice.⁵⁶⁶ Such constituent elements appear universally accepted as being the minimum essential foundations upon which practices must include if they are to be described as implementing restorative justice.⁵⁶⁷ These base elements of restorative justice theory include primarily deliberative decision making, involving the primary stakeholders of an offence. However, the remit of ‘stakeholder’ and those individuals it may incorporate continues to be contested. Indeed, through commodification of the restorative paradigm, the extent to which victim participants occupy that position can vary significantly between practices. A restorative justice practice

⁵⁶³Wright, M. (2002). The Court as a Last Resort. *British Journal of Criminology*. 42(3), 654-667.; Zernova, M. (2007). Aspirations of restorative justice proponents and experiences of participants in family group conferences. *British Journal of Criminology*. 47, 491-509.

⁵⁶⁴Rodogno, R. (2008). Shame and guilt in restorative justice. *Psychology, Public Policy and Law*. 14 (2), 142-176.; Braithwaite, J. (2003). The Fundamentals of Restorative Justice. In S. Dinnen, A. Jowitt, & T. Newton Cain (eds.), *A Kind of Mending: Restorative Justice in the Pacific Islands* (pp. 35-43). Canberra, ACT: Pandanus Books.

⁵⁶⁵Zedner, L. (1994). Reparation and *retribution*.; Wenzel, M., Okimoto, T. G., Feather, N. T. & Platow, M. J. (2008). Retributive and restorative justice. *Law and Human Behaviour*. 32(5), 375-389.; Judah, E. & Bryant, M. (2004). Rethinking Criminal Justice: Retribution vs. Restoration Introduction, in *Criminal Justice: Retribution vs. Restoration. Journal of Religion & Spirituality in Social Work*. 23(1/2), 1-6.; Daly, K. (2001). Revisiting the relationship between retributive and restorative justice. In H. Strang & J. Braithwaite, J. (eds.), *Restorative justice: Philosophy to practice* (pp. 33-54). Burlington, Vermont, U.S.: Ashgate Publishing Company.

⁵⁶⁶Duff, R. A. (2002). Restorative Punishment and Punitive Restoration. In L. Walgrave, (ed.), *Restorative Justice and the Law* (pp. 82-100). Devon, UK: Willan Publishing.

⁵⁶⁷Shapland, J., (2011). *Restorative justice in practice*. Routledge, London, UK.

should facilitate the empowerment of victims of crime through their occupation of a decision making role throughout the process.⁵⁶⁸ The process should be undertaken in a more informal manner,⁵⁶⁹ focussing less upon labelling,⁵⁷⁰ and censure and more upon resolution and reconciliation.⁵⁷¹ There should be discussion of the offence, its contributory factors and disapproval expressed of the act, but not towards the offender themselves. The process should not be punitive, but rather prospective and aiming to address future actions and repair of the damage caused by the offence.⁵⁷² It should not be dominated by the traditional retributive criminal justice system, and its constituent professionals who, it is alleged have dominated and ‘stolen’ conflict resolution from the interested parties.⁵⁷³ Again, with the commodification of restorative philosophy the adoption or exclusion of the above elements of the concept is significant. The extent to which restorative justice can be the subject of such commodification is exacerbated in light of the continued latent ambiguity of the philosophy. Despite the relative consensus regarding those central or minimum features of restorative justice practices agreed within past literature, the data collected during this research appears to demonstrate that victims do not value those elements which identify a practice as ‘restorative’. Those elements which are required by the label of restorative justice appear to be of limited importance to victim participants, who appear to value aspects which fall

⁵⁶⁸Zehr, H. &Sawin, J. (2007). The ideas of engagement and empowerment. In G. Johnstone& D. Van Ness (eds.), *Handbook of Restorative Justice*. Cullompton, Devon: Willan Publishing. pp. 41-58.; Umbreit, M. (1994).Victim empowerment through mediation.*Perspectives*.18(3), 25-28.; Hoyle, C. & Sanders, A. (2000). *Police Response to Domestic Violence: From Victim Choice to Victim Empowerment? BritishJournal of Criminology*. 40(1), 14-36.

⁵⁶⁹Dzur, A. (2011). Restorative Justice and Democracy: Fostering Public Accountability for Criminal Justice. *Contemporary Justice Review*. 14 (4), 367-381; Ward, T., &Langlands, R., (2008). Restorative justice and the human rights of offenders: Convergences and divergences. *Aggression and violent behaviour*.13, p355-372.

⁵⁷⁰ Becker, H. (1963). (revised 1973). *Outsiders*. New York: Free Press.;Tannenbaum, F. (1938). *Crime and Community*. London and New York: Columbia University Press.;Lemert, E. M. (1951). *Social Pathology*. New York: Mcgraw-Hill.; Goffman, E. (1959).*The Presentation of Self in Everyday Life*. New York: Anchor Books; Goffman, E. (1982). *Interaction Ritual*. New York: Pantheon Books; Goffman, E. (1974). *Frame Analysis: An Essay on the Organization of Experience*. Cambridge: Harvard University Press; Goffman, E. (1963). *Stigma: Notes on the Management of Spoiled Identity*. Englewood Cliffs, NY: Prentice-Hall.

⁵⁷¹Newburn, T. &McEvoy, K. (2003).*Criminology, Conflict Resolution and Restorative Justice*. Basingstoke, Hampshire, UK and New York, NY: Palgrave MacMillan.

⁵⁷²Kilty, J., (2010). Gendering violence, remorse, and the role of restorative justice: deconstructing public perceptions of Kelly Ellard and Warren Glowatski. *Contemporary justice Review*. 13 (2), 155-172.

⁵⁷³ Christie, N., (1977). Conflicts as property

outside the restorative justice remit, such as increased formality and the fulfilment of punitive desires. Such desires potentially arise from victims erroneous expectations remaining unchallenged within the preparatory meetings.⁵⁷⁴

ii. Restorative justice theory and victim appreciation

It is suggested that an inverse relationship between restorative justice theory and victim experiences of restorative process is illustrated through examination of those aspects which victims valued and those aspects which were experienced negatively. Such an inverse relationship can be demonstrated through participants' comments regarding their assessment of the informal context in which the process occurred:

“I was surprised at the Panel itself, it was too informal for what I was expecting...” [Interview-B014].

“I didn't think it was appropriate to be that casual...I thought it was a serious matter and would have liked the atmosphere to be too.” [Interview-A029].

Whilst some victim participants accorded their negative experience to the unexpected nature of the informality, supporting those assertions that an expectation-reality gap can operate to reduce participant benefits, other victim participants clearly stated that they were fully aware of the context in which the process would occur, but reiterated their dislike for such informality. This clearly rejects those principles of informality and equality espoused by many restorative theorists, representing a clear divergence between restorative theory and the actual impact of its implementation.

Furthermore, those comments emphasising the presence of the police, and those negative comments resulting from victim differentiation between Police Constables and PCSOs again demonstrates a reluctance to embrace the informal nature of conflict resolution

⁵⁷⁴ See section 6 for greater discussion of the multiple objectives of the preparatory meetings

advocated by restorative justice theory and reflects a propensity among victim participants to rely upon more familiar retributive formats including labelling the offender:

“I didn’t like the way the offender was addressed ... like they hadn’t done anything wrong ... they needed to be reminded that they were in the wrong and that was why we were there....they committed a crime and needed to be dealt with”

[Interview-A006].

The data presented above suggests that key elements which contribute to victim’s satisfaction appear inversely related to classic restorative justice principles. Further exploration of this theory however, cannot be addressed through reference to past empirical studies utilising only single measurements addressing overall values of satisfaction, which, despite negative experiences resulting from specific aspects of the restorative process, appears to remain positive. This further questions the accuracy of claims within extant work that negative victim experiences result from victims’ inadequate preparation, whilst this may offer an explanation into some negative experiences recorded by victims it cannot be applied to victim participants within this study due the apparently extensive and detailed preparatory stages undertaken by all involved. However, the continued existence of those retributive desires held by victims persisting throughout the preparatory stage and subsequently throughout the restorative justice meeting further questions the role and success of the preparatory meetings themselves. Whilst some elements of the data collected during this research do reflect the argument that preparation stages are essential for restorative justice practices to assist in the reduction of the expectation-reality gap, which if allowed to persist can result in significant negative experiences for all participants, this cannot be identified as the sole reason for those negative experiences recorded by some victims. This therefore questions the extent to which the preparatory stage of restorative justice processes operates to

reduce the expectation-reality gap and to educate participants as to the principles of restorative justice, when their retributive desires survive such preparation.

6. Preparation, multiple objectives and varying success

As stated above and within initial chapter of this thesis, the preparation of individuals prior to their engagement in restorative justice processes is repeatedly identified as being crucial for delivering positive experiences of victims. However, the reason for this importance is unexplored within previous studies, with limited discussion regarding the role such preparation fulfils other than attempting to reduce victim uncertainty.⁵⁷⁵ Furthermore, those few studies which do address the role of preparation within restorative justice programmes merely distinguish between successful and inadequate preparation, relying upon this distinction to explain negative experiences recorded by some victims.⁵⁷⁶

The preparatory stages undertaken within the restorative justice schemes in which this research was undertaken can be described as comprehensive, detailed and intensive. Following initial contact with the participants the individual facilitator for that case arranges an initial preparatory meeting with each individual, separately, usually within their homes. Prior to this meeting the facilitator will commonly conduct numerous telephone conversations with the victim and offender, which can be seen to represent the initial stages of preparation, as facilitators will regularly use these telephone conversations to explain the restorative process, its philosophy, aims and objectives, often for the purposes of reassuring the individual over their engagement and forthcoming experience.

⁵⁷⁵ See Chapter III, Section 3.

⁵⁷⁶ Bazemore, G. & Schiff, M. (2005). *Juvenile Justice Reform and Restorative Justice: Building Theory and Policy from Practice*. Devon, UK and Portland, OR, USA: Willan Publishing.; Choi, J., & Gilbert, M. (2010). 'Joe everyday, people off the street': a qualitative study on mediators'; Choi, J., Bazemore, G., & Gilbert, M., (2012). Review of research on victims' experiences in restorative justice: implications for youth justice. *Children and Youth Services Review*, 34, 35-42.

Following those, often repeated telephone conversations the same facilitator will then conduct a preparatory meeting with both the victim and offender, separately. From observation, these meetings commonly lasted between thirty minutes to an hour, during which time the facilitator would read questions which formed the script governing the restorative meeting itself. Furthermore, the process would be explained in detail, identifying the philosophy behind the restorative process, its aims and objectives. The participants were repeatedly given the opportunity to ask questions regarding any aspect of the process, including what could be expected as an outcome, and the process involved in securing those outcomes. Indeed, those participants were actively encouraged to ask as many questions as they desired, with the facilitator repeatedly attempting to establish the level of understanding and awareness of the process held by the participants, in another attempt to secure a successful process. It appears therefore that what is described as ‘preparatory meetings’ which occur within this specific restorative justice scheme pursue multiple objectives including securing the engagement of participants, preparing those participants for the process and in so doing reducing the expectation reality gap and finally attempting to distil knowledge and awareness of restorative justice among participants.

i. Securing engagement in restorative justice practices

Whilst past studies demonstrate low levels of participant engagement whereas participation in this research lay at 90%, far exceeding the levels of engagement recorded in past empirical studies. It is clear that preparation in this context secures high levels of victim engagement. Primarily, the preparatory stages of this programme, being comprehensive and well delivered may offer some explanation for surprisingly high levels of victim participation in this study. These levels of engagement are particularly significant when compared to those levels of participation recorded within extant empirical work, with victim participation

commonly resting at 40%.⁵⁷⁷ This discrepancy between participation levels may be a result of the differing methods employed in the pursuit of participants across different restorative justice programmes. Traditionally, restorative justice referrals and subsequent participant engagement were sought through telephone or mailed invitations. It is apparent from past research that reticent participants are quick to dismiss such invitations. The programme within which this research was conducted undertook extensive efforts to alleviate participants concerns prior to their actual engagement in the restorative justice process itself. This comprised of initial telephone conversations to establish a preparatory meeting, which was depicted as an opportunity to learn more about the process and the potential benefits resulting from participation. This meeting is then utilised to alleviate the concerns of participants and the secure their future engagement.

As stated, throughout the preparatory stages the facilitator attempts to alleviate the concerns of the victims and attempt to secure their commitment to engaging in the restorative justice process. This was evident in conversations where victims expressed reservations over participation, which were subsequently met with reassurance from the facilitator, in addition to a suggestion that the victim would feel better able to make an informed decision following further explanation at a preparatory meeting. Such explanations, delivered during the subsequent face to face preparatory meetings often succeeded in securing reticent participants engagement. The extent to which facilitators utilise the preparatory stages as a method to secure participant engagement is demonstrated through statements made by multiple participants including:

⁵⁷⁷Taussig, I. (2012). *Youth justice conferences: Participant profile and conference characteristics*. Crime and Justice Statistics Bureau Brief. Issue Paper no. 75. NSW Bureau of Crime and Statistics Research.; Dutton, K. & Whyte, B. (2006). CJSW briefing no. 8: *Implementing restorative justice within an integrated welfare system: The evaluation of Glasgow's restorative justice service, summary report*. Edinburgh: CJSW Development Centre for Scotland.; Wilcox, A. & Hoyle, C. (2004). *The national evaluation of the youth justice board's restorative justice projects*. URL (accessed 20 June 2008).

“I was concerned about the whole thing, meeting them [offender] and everything, but they [facilitator] was really helpful and those [preparatory] meetings really helped me and settled my nerves” [Interview-B007].

The alleviation of participants concerns is present throughout all contact with the restorative justice facilitator, commencing from the initial telephone conversation, through all subsequent communications, to the preparatory meeting and even during the moments immediately prior to the restorative panel itself. Such attempts to alleviate participant concerns were evident in conversations where victims expressed reservations over participation, which were subsequently met with reassurance from the facilitator, in addition to repeated suggestions that the victim would feel better able to make an informed decision following explanation at a preparatory meeting. This initial approach secured future meetings between the potential participant and the restorative justice facilitator, allowing for additional opportunities to convince the individual to participate with the restorative process. Such explanations, often adapted to directly address those concerns previously identified by the participants, delivered during the subsequent face to face preparatory meetings often succeeded in securing reticent participants engagement. This was particularly the case when the potential participant was faced with the choice to engage with the restorative justice process, or the case would not proceed through other, traditional routes, due to reluctance from the police to process the case, usually due to a lack of sufficient evidence. This is reflected through those comments addressed previously identifying victims’ motivations for engaging with the restorative justice process.

This suggests that, in addition to the roles identified within extant literature, the preparatory meetings occurring within this restorative justice scheme also serves to secure victim engagement and maintain the unexpectedly high participation levels not achieved

within previous empirical studies.⁵⁷⁸ The persistence employed by facilitators in this restorative justice scheme in securing individuals participation (both victim and offender) may be of significant importance in light of the arguments presented within this thesis, that victims remain unaware of restorative justice as either a theory or practice and that they continue to possess misconceptions and misunderstandings of restorative justice philosophy and objectives. This determination and repeated contact with victims may be essential for both their engagement in the process but also their education and subsequent experience of the practices. Demonstrated within the pre-intervention questionnaires, significant numbers of potential participants are unaware of restorative justice. It cannot be expected therefore that those individuals are capable of making informed decisions regarding their engagement in restorative justice practices, if they possess no knowledge of the theory, philosophy or practice.

The continued interaction of the victim and facilitator appears to dramatically increase their levels of engagement and contributes to the creation of trust between the facilitator and participants. This level of rapport which exists between the participants and their facilitator is often identified and referred to throughout victim participants' comments regarding their perceptions of the facilitators' role during the restorative process, commonly stating that:

“The way the facilitator listens during the meetings and makes sure that you get anything that you may need, answering your questions does make a big difference, you feel like they are actually listening and trying to help you....you really trust them” [Interview-A023].

It would appear, therefore, that such preparatory meetings succeed in their efforts to secure victim participation, as demonstrated through the previously described high levels of

⁵⁷⁸Gehm, J. (1998). Victim-offender mediation programs: An exploration of practice and theoretical frameworks. *Western Criminology Review*, 1 [Online]. URL (accessed 19 May 2008): <http://wcr.sonoma.edu/v1n1/gehm.html> .; Nicol, W. J., Kirkwood, S. & MacFarlane, L. (2006). Youth justice services evaluation report: April 2004 – March 2005. Sacro. URL (accessed 20 June 2008): http://www.sacro.org.uk/YJ_Eval_Report.pdf

victim engagement. The distinction between this study and that past empirical research which established participation levels of between forty and sixty per cent lies in having greater flexibility, persistence and longevity when securing victims participation. Not relying upon an initial telephone conversation to determine participation or not, the facilitators utilise the process of organising an ‘initial’ meeting between themselves and the victims as a method of securing their subsequent engagement with the restorative process. These efforts are then further emphasised during the personal preparatory meeting itself, which facilitates an increased confidence and rapport between the victim and ‘their facilitator’ demonstrated in the previous quotations.

However, the extent to which the preparatory stage, through its utilisation as a method of securing participation, can also fulfil its role in educating and preparing victims for the restorative process is questionable. Throughout this research it is demonstrated that victims did not desire the opportunity to assume a decision making role with regards to the restorative outcome. It would be expected that a preparation stage of the process would make victims aware of such a role. However, if these stages are utilised to secure engagement at the expense of preparing victims for the forthcoming process, those aspects which are of concern to victims may be somewhat marginalised during their discussions with the facilitator in favour of describing aspects of the process which are more desirable to the participating victim. This peripheral discussion of those less desirable aspects of the restorative justice process during preparatory meetings may be a possible explanation for those levels of surprise expressed by victim participants in relation to the assumption of decision making roles during the restorative process, reflected in comments such as:

“I didn’t expect to be asked what the outcome should be...it was a big surprise” [Interview-A027].

If such preparatory meetings succeeded in educating victims regarding restorative justice philosophy no aspect of the process should be unexpected. However, such preparation

and education regarding the process in which they would engage may be reduced or sidelined through pursuing additional objectives such as securing the individuals participation in the programme. When faced with a reticent potential participant, those aspects of the process which are known to be less desirable to victims or which may cause concern may not be as clearly explained and detailed as other, more appealing aspects of the restorative justice process. The pursuit of securing victim engagement is reflected in comments made by numerous victims regarding their decision to take part in the restorative programme, such as:

“I wasn’t convinced it [restorative justice] was for me when I first heard about it ... but then the meetings and talks with the official really convinced me to give it a try.” [Interview-B003]:

“I wasn’t going to take part if I’m honest, I didn’t really see the point, but after meeting the lady [facilitator] I realised what I could get out of the process...and I’m glad that I did.” [Interview-A018].

ii. Managing expectations, reducing the expectation reality gap

Identified within past empirical research,⁵⁷⁹ successful preparation can dramatically assist in the reduction of the expectation-reality gap which has been shown to potentially increase negative experiences of victims participating in restorative justice schemes. This reduction in negative experiences appears to emanate from victims possessing an awareness of what tasks they are required to undertake during the panel, subsequently offering them some opportunity to prepare themselves for those roles. This is reflected within statements such as:

“The meeting went well...I knew what to expect and was well prepared for it...nothing caught me off guard” [Interview-A024]:

⁵⁷⁹ Barton, C. (2003). *Restorative Justice: The Empowerment Model*.; Van Ness, D. & Strong, K. (2010). *Restoring Justice*.; Umbreit, M. (1998). Restorative Justice Through Victim-Offender Mediation: A Multi-Site Assessment. *Western Criminology Review*.1(1).

“I felt really prepared for the meeting...and that helped a lot because I knew what would happen and what I needed to do when I was in there...it all went well” [Interview-A016].

This awareness, achieved from comprehensive preparation of victims appears to significantly reduce the expectation-reality gap (in regards to some aspects of the process), thus minimising the impact of unfulfilled expectations or unexpected requests arising during the restorative meeting itself. Whilst accepting therefore, that the preparation of victims participating in restorative justice can be of crucial importance in maximising the beneficial experiences resulting from their engagement through reducing their expectation reality gap, this research additionally suggests that this alone is not enough to minimise negative experiences of victims. Despite comprehensive preparation of victims undertaken by both restorative justice schemes upon which this research focuses, some victims continued to record negative experiences relating specifically to the restorative aspects of the process. These negative experiences were recorded despite the preparation of those victims and their full awareness that participation in the restorative justice process would entail those aspects of the process. Furthermore, victims who reported negative experiences arising from the implementation of aspects described within literature as being of central importance to the restorative justice process appear to have normative objections to those elements of the process, preferring to pursue their subjective desires, which appear best placed within processes governed by a retributive paradigm.

The preparatory stages undertaken within this restorative justice implementation appear to succeed in establishing realistic expectations for victims, specifically regarding outcomes and the process.⁵⁸⁰ Throughout this research a minimal number of victims held

⁵⁸⁰ Achilles, M. & Zehr, H. (2001). Restorative justice for crime victims: The promise and the challenge. In G. Bazemore & M. Schiff. *Restorative community justice: Repairing harm and transforming communities* (pp. 87-99). Cincinnati, OH: Anderson Publishing Co.; Fercello, C., Greenwood, J., Umbreit, M. & Umbreit, J. (2000). *National Survey of Victim-Offender Mediation Programs in the United States* Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime.; Choi, J., Bazemore, G., &

unfulfilled expectations following their preparation meeting. Furthermore, it was established that such unfulfilled expectations would subsequently impact negatively upon victim participants. This negative impact of erroneous expectations can be illustrated through comments made by victims regarding the attendance of a Police Community Support Officer when a Police Constable was expected:

“I was disappointed that there was only a PCSO there ... I was wanting a PC there, a proper police man....I expected a PC...because PCSO are seen as a bit of a joke I think, like parking officers so that was disappointing...” [Interview-A024].

Furthermore, within data collected during this study, the expectation-reality gap would not appear to be as wide as would be expected. Indeed, victims’ expectation in relation to the outcome of the restorative meeting and the tasks undertaken by the offender often correlated with the severity of the outcomes delivered. Contrary to some criticism, such outcomes were not perceived by participating victims as being lenient or inadequate. This is demonstrated in comments such as:

“once you get in there the outcome that you wanted all the time becomes less important as you realise how good the process is on its own, being able to see the person [offender], ask them questions, hear their explanations ... their apology ... it lets you move on and get past the impact the offence had...’ [Interview-A029];

“Really I’d have to say the chance to see them [offender] and realise they’re just some young kid... that was probably the best part of the process. Being able to ask them questions too, like why they did it and how they got in ... that was the real good part of the Panel...not chasing some harsh outcomes or punishments”

[Interview-A012].

As stated, whilst the preparation stage is repeatedly described as crucial within extant literature as unexpected events are identified as resulting in negative experiences for victim participants, data within this research continues to demonstrate cases where expected events resulting in negative experience regardless of victim preparation, e.g. the decision making role expected from the victim. This is clearly reflected within victim references to the decision making responsibility they were expected to assume, such as:

“I didn’t like being asked what the outcome should be...I knew that I would be asked but it didn’t make the moment any easier and I would rather not be asked...” [Interview-A012].

In addition to their comments regarding the presence of a PCSO rather than a Police Constable:

“while I knew it would most likely be a PCSO I still wasn’t happy when they arrived....it gives the impression that the process isn’t serious enough for them [police] to take seriously...and that affects the offenders attitude too I think....” [Interview-B009].

This appears to suggest that whilst the existence of an expectation-reality gap is an important element with the potential to result in a detrimental impact upon victim experiences, it does not appear that preparation and the reduction of this expectation-reality gap alone can ensure positive experiences for victims participating in restorative justice practices. Whilst the reduction of the expectation-reality gap through the implementation of a successful preparatory stage is accepted as important in assisting with the delivery of beneficial experiences, the extent which this reduction is instrumental in the delivery of positive experiences is more limited than extant literature claims. Data collected during this study would suggest that such reductions in the expectation-reality gap are only one

contributing element of many which collectively affect victims' experiences of restorative justice practices.

iii. Education of restorative values, the awareness of victims

The education of victims regarding restorative justice values, during the preparatory stages of the process, would not appear to be as successful as other aspects of the preparation, such as reduction of the expectation-reality gap or securing participant involvement. It would appear that, despite efforts to education individuals over restorative justice values and objectives, victim desires and beliefs which commonly involve retributive or punitive principles survive these preparatory stages and persist throughout the process. This appears to result in a retributive perspective from which their experiences of the restorative justice process are assessed, with the potential consequence of retributive influences affecting their restorative experiences. The education of victim participants regarding restorative justice values during the preparatory stages of the process is of particular importance when examined in light of the commodification of the restorative justice paradigm. It is of crucial importance that victims are aware of those aspects of the paradigm which are adopted by the culture carriers within the restorative practice, to assist in the formation of accurate and realistic expectations of the process, the obligations of engagement and potential outcomes.

The extent to which victims appear to participate within the restorative justice process whilst continuing to value retributive aspects or possess retributive desires is illustrated through victim comments such as:

“...I wanted to take part once it was all explained to me....I wanted to teach them [offender] a lesson...show them that they can't do this without being punished...” [Interview-B009].

Additionally, the extent to which victims engaging in the restorative process strive to avoid those aspects repeatedly identified within extant literature as being central features of restorative justice, such as the assumption of a decision making role during the process and a departure from retributive labelling in favour of a focus upon repair and progress. This apparent reticence to embrace those central restorative principles is further reflected though victims continued focus upon retributive aspects of the process, and attempts by victims to incorporate retributive aspects into the restorative process persisted throughout the preparation stage and beyond. This suggests either a failure to educate victims fully regarding restorative justice or a rejection of those principles by victims. However, those preparatory meetings which were observed by the researcher, in addition to the literature distributed to participants prior to their engagement clearly identifies this aspect of the restorative justice process but such information appears to be either ignored or misunderstood by victim. This lack of awareness within victims reflects assertions within existing literature that offenders may not possess a complete understanding to what they are entitled.⁵⁸¹

Thus whilst preparation is important to an extent in reducing the expectation-reality gap and minimising the detrimental impact unfulfilled expectations may have upon victim experiences, the extent to which victims can and will relinquish their reliance upon retributive principles is crucial for full satisfaction within restorative justice processes. However, their inclination to relinquish such principles is questionable. It would appear therefore that despite its potential to reduce the expectation-reality gap possessed by participants in restorative justice schemes, such preparation does not appear to impact upon, or alter the beliefs and desires of victims in relation to the more punitive and retributive elements of the traditional criminal justice system. The persistence of such retributive or punitive desires among victims appearing to engage with the restorative justice practice whilst displaying reticence towards

⁵⁸¹Radzik, L., (2007). Offenders, the making of amends and the state. In G. Johnstone & D. W. Van Ness (eds.), *Handbook of restorative justice* (pp. 192-207). Cullompton, UK: Willan Publishing.

its philosophical underpinnings is demonstrated through victim comments regarding their avoidance of decision making responsibility, their desires to enact punitive outcomes aimed at “teaching the offender a lesson”, the laboured allocation of labels such as criminal and offender utilised throughout victim responses and their clear rejection of the informal context of the restorative process in favour of a more formal, court like setting.

Importantly, the persistence of such desires or aspirations results in a significant impact upon victim experiences of the restorative justice process. Whilst they continue to pursue punitive outcomes victims appear to suffer negative experiences in relation to those elements of the process which conform to restorative justice’s central themes and features, appearing to record positive experiences in those aspects of the process which contain a greater element of retributive theory, more akin to traditional criminal justice process.

The persistence of such retributive desires, far removed from the philosophy of restorative justice, of which victims are supposedly educated during their preparation prior to engagement in the restorative process, questions the extent to which this preparatory stage successfully educates participants and the ‘essential’ nature of this preparation. If such preparation fails to address these persisting retributive desires of which restorative justice cannot deliver, resulting in negative experiences arising from participation in restorative justice practices, the actual impact such preparation holds is significantly reduced from that which is asserted within extant literature, which focuses exclusively upon the reduction in victims expectation-reality gap. Whilst the reduction of such a discrepancy is of some importance, the data of this study clearly suggests that it is not the sole explanation for negative experiences reported by victims, and the reason for those negative experiences, specifically their desire for punitive elements within the restorative process and a rejection of central restorative principles such as stakeholder empowerment through responsibility cannot be rectified through sole reliance upon implementing those preparatory stages of preparation prior to participant engagement.

It would appear therefore that the preparatory stage of this restorative justice scheme pursues multiple objectives. However, if preparation has multiple purposes such as education, preparation or expectation management and securing engagement, to what extent do these confuse its purpose and not effectively succeed in all objectives. The data collected through the course of this research suggests that whilst a successful preparatory phase undertaken with victims prior to their engagement in restorative justice practices offers the potential for ‘management of victim expectations’ to reduced their expectation reality gap, thus minimising negative experiences resulting from such unfulfilled expectation or unexpected demands. Whilst this represents a potentially important role for the preparatory process, such undertakings alone do not appear to guarantee beneficial experiences for victims participating in restorative justice processes.

The education and awareness delivered through such preparation is valuable, however victims appear to continually report negative experiences in relation to those aspects of the process with greatest divergence from the traditional retributive paradigm, being those aspects which most accurately reflect restorative justice philosophy. It is therefore suggested that whilst preparation of participants is an important element to the success of restorative justice implementation, an effective paradigm shift is more important in delivering successful restorative justice interventions, providing those benefits which restorative justice theory espouses. This apparently central feature to successful restorative justice practice returns to those initial assertions by purist restorative theorists that a paradigm shift is necessary for restorative justice success.

Whilst such changes in paradigms have been commonly referred to as “changing the retributive lenses” within Howard Zehr’s seminal work “Changing lenses”⁵⁸² the data discussed above raises an important question, specifically whose lenses to change? This

⁵⁸²Zehr, H., (2001). Changing Lenses.

research appears to suggest that whilst policy makers and criminal justice officials may be inclined to such a change, demonstrated through their acceptance and implementation of restorative justice practices, this does not automatically deliver successful restorative outcomes as many victim participants appear reluctant to engage with restorative justice theory to the same extent and continue to rely upon retributive principles and desires throughout their engagement in the restorative scheme. If correct, the success of restorative justice implementations would therefore not rely upon compliance to restorative theory, or their existence within or outside of the traditional criminal justice system, but rather the extent to which those individual participants are capable or willing to relinquish their apparent pre-existing retributive understandings of the justice process, their retributive desires, and punitive objectives.

7. Chapter Summary

The data presented throughout this chapter raises significant questions regarding the traditional theories and assumptions held by restorative justice advocates regarding those aspects of restorative justice which are beneficial to, and desired by victim participants.

Despite assertions within literature that restorative justice represents informal conflict resolution which is valued by participants; within this research victim participants appear to actively pursue greater formality throughout restorative justice practices. This is reflected in victim comments regarding the importance of a clear police presence, and further emphasised by the minority of participants criticisms of the attendance of PCSO's over Police Constables due to their perceived reduction in authority and respect.

Furthermore, this desire for elements not normally considered to exist within the remit of the umbrella concept of restorative justice is emphasised throughout victim responses which demonstrated their reliance upon and desire for punitive outcomes during their

restorative processes. The central premise of restorative justice theory, that being of victim empowerment through deliberative decision making,⁵⁸³ appears not to be desired by victims as claimed in criticism of the traditional criminal justice system. Indeed, victims who participated within this research actively avoided such a decision making role during the restorative process, preferring that the facilitator assumes responsibility for such decisions. This avoidance of responsibility and a desire to rely upon traditional court based third party decision making throughout the restorative process directly questions those central assertions and assumptions of restorative justice theorists.⁵⁸⁴

In addition to victim participants valuing aspects for the process which are not usually considered to fall within the traditional restorative justice paradigm, the data collected throughout this research also suggests that aspects which are repeatedly emphasised within restorative justice theory as being of benefit to victims are not valued to the same extent. This is reflected through victims' comments regarding victim's ambivalence towards offers of apology from offenders in addition to the apparent irrelevance which offender remorse has upon victim assessments of the process and its benefits. However, one element of the restorative justice process which is identified as being both important and beneficial for victim participants within past literature is valued by victims in this study. Specifically, the opportunity provided by participation in restorative justice to ask the offender questions regarding the offence and to seek reassurance against further victimisation is identified by participants as being of significant benefit resulting from the restorative process.

Within this chapter it has been argued that the data collected from victim participants suggests that an inverse relationship exists between central aspects of restorative justice theory and those aspects of the process which are valued by victim participants. It would

⁵⁸³Wemmers, J. & Cyr, K. (2005). Can Mediation Be Therapeutic for Crime Victims? An Evaluation of Victims' Experiences in Mediation with Young Offenders. *Canadian Journal of Criminology and Criminal Justice/Revue canadienne de criminologie et de justice pénale*. 47(3), 527-544.

⁵⁸⁴Christie, N. (1977). Conflicts as Property.; Zehr, H. (2001). Changing Lenses.; Braithwaite, J. (2002). Restorative Justice and Responsive Regulation.; Strang, H. (2001). *Restorative Justice and Civil Society*.

appear that what are seen as central aspects of restorative theory are not valued, to the same extent, by participating victims, who in turn appear to desire elements not traditionally located within the restorative justice paradigm, such as the pursuit of greater formality and an emphasis upon punitive outcomes.

It is clear from the discussions above that the existence of an expectation-reality gap can operate to impact negatively upon victim experiences of the restorative justice process. The potential of this expectation-reality gap to negatively affect victim experiences appears to be reduced if preparation of participants is undertaken prior to their restorative meetings. Such preparatory meetings appear, in this instance, to pursue a range of objectives including securing victim engagement, reducing the expectation-reality gap and increasing participant awareness of the values and outcomes of restorative justice. However, it is suggested that the multiple aims and objectives of the preparatory stages in practice may operate to confuse the implementation and true purpose of the preparation.

Education of participating victims regarding the process and values of restorative justice is clearly necessary, but evidently it is not sufficient as numerous errors persist within victim comprehension of restorative justice and their expressions of surprise result in lower satisfaction delivered by the process. Whilst past literature asserts that insufficient preparation explains poor experiences,⁵⁸⁵ with low satisfaction recorded within victims,⁵⁸⁶ it does not appear, from the data presented within this thesis, that this can be rectified solely by recourse to participant preparation.

⁵⁸⁵Coates, R., Vos, B. & Umbreit, M. (2003). Restorative Justice Circles: An Exploratory Study. *Contemporary Justice Review*. 6(3), 265-278.; Umbreit, M. & Armour, M. (2010). *Restorative Justice Dialogue: An Essential Guide for Research and Practice* New York: Springer Publishing Company; Roberts, A., Coates, R. & Umbreit, M. (1998). Impact of victim offender mediation in Canada, England and the United States Crime Victims Report. 1(6), 83,90-92..

⁵⁸⁶Wemmers, J. (2002). Restorative Justice for Victims of Crime: A Victim-Oriented Approach to Restorative Justice. *International Review of Victimology*. 9(1), 43- 59.; Wemmers, J. & Cyr, K. (2005). Can Mediation Be Therapeutic for Crime Victims? An Evaluation of Victims' Experiences in Mediation with Young Offenders. *Canadian Journal of Criminology and Criminal Justice/Revue canadienne de criminologie et de justice pénale*. 47(3), 527-544.

Key arguments arising from the empirical data collected throughout this research suggests that victim experiences of restorative justice are premised upon a relatively flawed understanding of restorative justice theory and its core values. Victims value aspects of processes that whilst described as restorative justice cannot be recognised as compliant with the core principles of restorative justice theory. This appears compounded through the proliferation of varied practices continuing to employ the term restorative justice, facilitated though the continued lack of clarity in restorative justice theory, the result of which are practices with no clear identity and due to the pursuit of funding and other considerations results in the implementation of something not restorative justice, yet exercising control over individuals outside of the criminal justice system.

Potential explanations for this apparent disjunction between victim desires and experiences and restorative justice theory may originate from the concept and principles of the traditional criminal justice system being firmly engrained in the mentality of victims such that any departure from that system is viewed negatively. Alternatively, and of more significance to the implementation of restorative justice itself, one alternative explanation could be that victims understandings of the restorative paradigm are founded upon the information conveyed by culture carriers within specific practices. The commodification of the restorative paradigm by those culture carriers will subsequently influence the information conveyed to victim participants and thus impact upon their understanding of the restorative process. Whilst Zehr argues for a change in lenses when addressing and reacting to criminal offences,⁵⁸⁷ data within this chapter suggests that what is of crucial importance is who changes such lenses.⁵⁸⁸ It appears from the data collected during this research that even if the state apparatus of criminal justice alter their perspective and incorporate restorative justice resolutions (irrespective of the mutation of restorative justice principles) the success of such

⁵⁸⁷Zehr, H., (2001). *Changing Lenses*

⁵⁸⁸Dzur, A., (2012). Restorative justice and democracy: fostering public accountability for criminal justice, *Contemporary Justice Review*. 14 (4), 367-381.

practices will intrinsically rely upon the extent to which the participants of those practices, specifically victim participants, accept and embrace this change in lenses or perspective.

Chapter VI

Conclusions and Implications for Future Policy and Practice

1. Introduction

This final chapter draws conclusions from the data presented throughout the preceding chapters. It examines the extent to which the central arguments of the thesis provide new perspectives from which to view restorative justice practice, and examines potential implications for policy, practice and future research. The first section of this chapter examines the extent to which the aims outlined at the start of this thesis were fulfilled. This is followed by an examination of the potential implications of those conclusions. Firstly, the potential direction of future research is discussed, through identification of the limitations inherent within the aims and objectives of this research. The chapter then discusses implications for future policy development and the implementation of restorative justice within the criminal justice system of England and Wales. The extent to which the future design of programmes will inevitably modify the restorative justice paradigm in pursuit of specific aims and objectives is also examined, with reference to culture carriers and the extent to which they convey their understanding to victim participants.

2. Aims of the Thesis

The primary aim of this research was to establish the expectations and experiences of victims participating in a restorative justice practice, and to determine the extent to which victim expectations of the restorative process may influence their subsequent experiences.

Chapter III focused upon the aim of establishing victim expectations of the restorative practice. In pursuit of this, it detailed the expectations of victim participant in addition to identifying their awareness and understanding of restorative justice as being limited and flawed. This was in spite of the restorative practice at Location A having been in operation since 2005 and maintaining a relatively high media presence within a small geographical area. Furthermore, it established a divergence in victim expectations between the restorative process and the offender, with victims possessing positive expectations of the process whilst their expectations of the offender remained negative. Additionally, the preparatory stages of the restorative practice were detailed demonstrating the extent to which such activities influenced victim expectations of the restorative process.

A second aim of this research was to examine victim experiences of the restorative process. This research intended to determine the effect of participation in restorative justice practices upon victims and the extent to which claims within restorative justice literature are evidenced within practice. The data presented within this thesis demonstrated that victim experiences of the restorative process are, in reality, a culmination of multiple contributory factors. Some of these factors may be experienced negatively without impacting on overall positive victim evaluations of the restorative process.⁵⁸⁹ Such nuanced experiences are simply not captured in quantitative studies which have provided the bedrock of empirical evidence in this area hitherto.⁵⁹⁰ Such contributory factors were examined and their correlation with commonly cited principles of restorative justice theory was determined. This research suggests that an inverse relationship exists between commonly cited central principles of

⁵⁸⁹ Demonstrated within preceding Chapter IV and V.

⁵⁹⁰ De Beus, K. & Rodriguez, N. (2007). Restorative justice practice: An examination of program completion and recidivism. *Journal of Criminal Justice*.35, 337-347.; Nugent, W. Williams, M. & Umbreit, M. (2004). Participation in victim-offender mediation and the prevalence of subsequent delinquent behaviour: a meta-analysis. *Research on social work practice*.14, 408-416.; Kirkwood, S. (2010). Restorative justice cases in Scotland: factors related to participation, the restorative process, agreement rates and forms of reparation. *European Journal of Criminology*.7,107-121.; Bonta, J., Wallace-Capretta, S., Rooney, J. & McAnoy, K. (2002). An outcome evaluation of a restorative justice alternative to incarceration. *Contemporary Justice Review*.5(4), 319-338.; Hughes, S. & Schneider, A. (1989). Victim-offender mediation: A survey of program characteristics and perceptions of effectiveness. *Crime and Delinquency*.35, 217-233.; Davis, R. (2009). The Brooklyn mediation field test. *Journal of experimental criminology*. 5, 25-39.

restorative justice theory and those aspects of the restorative process valued by victim participants. Data collected throughout this research appeared inconsistent with commonly cited, central principles of restorative justice theory, specifically victims preference for informal conflict resolution,⁵⁹¹ the removal of third party ‘professionals’ from conflict resolution,⁵⁹² and the separation of restorative justice from traditional criminal justice system.⁵⁹³ In areas where victim experiences did not correlate with restorative justice theory it is suggested that this may be a result of an expectation–reality gap, which appears to persist despite extensive preparation of the victim prior to their participation.

Finally, data presented within Chapter V focused upon the final aim of this research, to determine the extent to which a nexus exists between victim expectations and their experiences of restorative justice practices.⁵⁹⁴ This data identified a relationship between victim expectations and their subsequent experiences of the restorative practice. This nexus results in negative experiences arising out of victims unfulfilled expectations of the restorative process. This negative impact arises regardless of the accuracy of the original expectation, with unfulfilled erroneous expectations resulting in similarly negative experiences. However, it is also established that, due to the complex nature of restorative justice interaction, victims can experience aspects of the process negatively (sometimes resulting from unfulfilled expectations) whilst perceiving the overall process as being beneficial.

3. Central Conclusions of the Research

⁵⁹¹ Woolford, A. & Ratner, R. (2007). *Informal Reckonings Conflict Resolution in Mediation, Restorative Justice, and Reparations*. London: Routledge.

⁵⁹² Christie, N. (1977).

⁵⁹³ See Chapter I, Section 4, i. ft.nt.38

⁵⁹⁴ See Chapter V.

This thesis established a number of important conclusions regarding the expectations and experiences of victims participating in a restorative justice practice. The findings of this thesis will be addressed in line with the objectives of the research; firstly, conclusions regarding victim expectations will be examined, followed by those conclusions relating to their experiences of the restorative process. The conclusions reached and the subsequent implications for future policy and practice are discussed. Specifically the impact of the commodification of restorative justice theory and the selection of elements of the paradigm by culture carriers is examined.

i. Victim expectations

Data presented within Chapter III clearly establishes restorative justice as an unknown concept among victims, prior to their participation. Questionnaire data demonstrated that victim awareness of restorative justice was extremely limited, in spite of a high media profile of location A within a relatively small geographic area.⁵⁹⁵ It is suggested within this thesis that victim awareness and comprehension of restorative justice is crucial to their participation, as without an accurate understanding of the practice, its aims and objectives, victims will remain incapable of developing accurate expectations. Such expectations are important due to the potential for erroneous and unfulfilled expectations to impact negatively upon victim experiences of the restorative practice.

Throughout Chapter I, the initial literature review suggested the unresolved debate regarding restorative justice theory does little to assist the formation of victim expectations of processes in which they engage. Lack of clarity regarding the aims and objectives of restorative justice, and the multitude of different practices operating under the label of restorative justice contributes to such confusion. Divergent practices cannot deliver universal

⁵⁹⁵ This reflects existing research which indicates victims as a group remain unaware of restorative justice practices, see: Shapland, J et al (2006). *Restorative justice in practice*, only 5 participants had heard of mediation before participation.

benefits, illustrated through the benefits of shuttle mediation compared to direct victim-offender interaction, or restorative cautioning delivering different benefits and experiences to Family Group Conferences. It is suggested that the latent ambiguity of the theory impacts upon practice and its implementation within the criminal justice system, which subsequently impacts upon the victims' ability to develop accurate expectations of the process. In this respect, victim understanding of restorative justice is crucial. This thesis has demonstrated that experiences can be dramatically affected through erroneous expectations, if such expectations are unfulfilled during the restorative process. Without an accurate knowledge of restorative justice theory and the practice in which they intend to participate, the formation of accurate expectations is not possible. This offers one explanation of the continued emphasis upon retributive elements and outcomes of the process not being readily reconciled with traditional restorative justice theory.

Chapter III indicated a low level of victim awareness of restorative justice at location A and B, prior to their referral to the schemes. This limited awareness existed despite the relative longevity of the schemes,⁵⁹⁶ and high levels of local media coverage. Once entering the scheme, gaps in understanding persisted despite preparation. However, such preparation appears to have been undertaken under the auspices of education, whilst pursuing multiple objectives including securing victim participation and the management of expectations. Data within this thesis suggests that through pursuing multiple objectives, the extent to which each objective is fulfilled is limited. This varying success is demonstrated through victims remaining confused regarding restorative justice theory and practice. However, the high levels of victim participation recorded within this research would appear to indicate that the objective of securing participation has been successful. Furthermore, the preparation received by victim participants was specific to the individual practice in which they engaged. Again,

⁵⁹⁶ The restorative justice scheme operating at location A has existed since 2005, processed over 500 cases and is actively involved in local publicity to increase awareness of its work within the area.

due to the modification of restorative justice philosophy and the selection of particular elements by those culture carriers, the preparation received at the scheme operating at locations A and B may be significantly different from such preparation received within a scheme in which those culture carriers have selected different elements of the restorative paradigm to carry through into their specific practice. As such, the experiences of victim participants will be predicated upon this specific understanding, conveyed by those culture carriers. Such experiences are therefore specific to the particular practice in which victim participants engaged, where those values and principles which were selected by those culture carriers have influenced victim participant's understanding.

An important theme which emerged during data analysis was that of the crucial position occupied by the gatekeeper of the restorative justice practice. However, this importance was not due to traditional concepts of access and participation, but related to the formation and management of victim expectations of the restorative justice process. Victims' responses repeatedly identified gatekeeper comments as being of crucial importance in the creation of their expectations.⁵⁹⁷ The central position occupied by culture carriers demonstrates the extent to which commodification of the restorative paradigm may influence victim participant's understanding and experiences. Through victim participants reliance upon the comments of culture carriers (facilitators), those elements of the restorative paradigm which culture carriers selected and implemented resulted in that commodification of the restorative paradigm directly impacting upon victim understanding and subsequently experiences of the process. This exclusive reliance upon information disseminated through gatekeepers' comments necessitates that their comments must be as accurate as possible, due to their potential to impact negatively upon victim experiences.⁵⁹⁸ Victims repeatedly identified the gatekeeper as being the origin of their expectations, and also significant in their

⁵⁹⁷ See preceding discussion in Chapter IV.

⁵⁹⁸ See Chapter III, Section 3, iii and discussed later within this chapter.

decisions to participate in the process. Whilst this importance of gatekeepers reflects previous work,⁵⁹⁹ it additionally emphasises their critical position not only in securing participation of both victims and offenders, but also in directly affecting the experiences of participants whose expectations are the product of gatekeeper comments. It is essential therefore that such comments, whilst accurate and realistic, continue to precipitate a desire among participants to engage with the restorative justice process, as opposed to the traditional criminal justice system, possibly through focussing upon those beneficial aspects of the process previously identified and described as procedural.

Within the limited expectations victims possess over the restorative justice process, a clear delineation appears to exist between aspects of the process reliant upon the offender, and aspects more appropriately described as procedural.⁶⁰⁰ Victims possess negative expectations relating to the offender and their actions during the panel, which appear to remain unchallenged throughout the preparatory meetings. Throughout this research victims expected offender remorse, contrition and reform as unlikely outcomes of the restorative justice process. However, the benefits of the restorative process dependent upon the procedure were perceived with certainty, including the opportunities to ask questions of the offender, to participate in the process and being involved in a meaningful manner.

ii. Victim experiences

Following an examination of victim expectations their experiences of the restorative process were established, through data collected during 45 semi-structured interviews. It is a central conclusion of this thesis that victim experiences of restorative justice are a product of multiple, complex factors which quantitative data is incapable of depicting. Furthermore, the

⁵⁹⁹ Marshall, T. & Merry, S. (1990).; Wemmers, J. & Canuto, M. (2002).

⁶⁰⁰ Ashworth, A. (2002). Responsibilities, Rights and Restorative Justice. *British Journal of Criminology*. 42(3), 578-595.; Fenwick, H. (1997). Procedural 'Rights' of Victims of Crime: Public or Private Ordering of the Criminal Justice Process? *The Modern Law Review*. 60 (3), 317-333.; Edwards, I. (2001). Victim Participation in Sentencing: The Problems of Incoherence. *The Howard Journal of Criminal Justice*. 40 (1), 39-54.

data discussed within preceding chapters, identifying negative experiences focuses upon those aspects of the process with which their expectations were not met. This expectation-reality gap appears to result in victims experiencing specific aspects of the process negatively, whilst not necessarily impacting upon victim assessments of the experience as a whole. Additionally, the commodification of restorative justice philosophy reduces the ability to generalise victim participant experiences across different restorative justice implementations. The position of each restorative practice both within and outside the criminal justice system will result in the pursuit of different aims and objectives. As relevant culture carriers within each practice will select specific aspects of the restorative paradigm which best deliver the individuals practice's objectives the experience of those victim participants will be specific to that particular commodification.

From examining both pre-intervention expectations and then victim participants' experiences post-intervention, the data established that an expectation-reality gap existed among victim participants. This was clearly demonstrated through victim participants' comments during the semi-structured interviews, specifically addressing aspects of the restorative process which were experienced negatively. Common across numerous negative assessments of the restorative justice process was the unexpected nature of the experience. Victims identified numerous aspects of the restorative process which resulted in negative experiences. This was in direct contrast to restorative justice literature. Such aspects included the informality of the process, stakeholder empowerment through deliberative decision making and the separation of the restorative process from the traditional criminal justice system. Additionally, aspects which victims valued also appeared to contradict central restorative theory, including the presence and participation of police during the restorative meeting and the facilitator assuming a decision making role during the process. However, within each aspect, victims' comments referred either to the unexpected nature of that element of the restorative process, or erroneous expectations as resulting negative

experiences. However, the unexpected nature of these elements and the extent to which those aspects contradict more traditional restorative justice theory may be illustrative of the commodification of the restorative paradigm and the selection of elements by culture carriers. Restorative practices appear to select aspects of the paradigm which correlate to the context in which the individual practice developed, in response to a perceived lack of local justice following the closure of a magistrate's court. Those elements which appear contradictory to restorative theory, such as formality and authority may have been selected in response to the communities' desires for 'justice' arising from the removal of their local magistrate's court. Such elements would therefore influence the expectations of victim participants and subsequently impact upon their experiences of the process.

This is specifically illustrated with regards to facilitator requests that the victims assume decision making responsibility towards the conclusion of the restorative process. Victims' comments repeatedly identified this aspect of the process as resulting in negative experiences (directly contradicting seminal restorative justice literature).⁶⁰¹ However, within such comments, victims repeatedly stated that the request was unexpected and that they had not realised or did not expect to assume such a role during the process. As such, victims appear to identify the unexpected nature of the request with their negative reaction, qualifying it to some extent through subsequent comments regarding their desire not to assume such a decision making role due to a lack of previous experience in performing such duties.⁶⁰² However, the unexpected nature of the request clearly contributes significantly to victims negative experiences relating to this particular aspect of the restorative practice.

Furthermore, victims' comments regarding the informality of the restorative practice, its physical layout and procedural operation, identifying it as negatively affecting their

⁶⁰¹Christie, N. (1977).; Zehr, H. (1995).; Wright, M. (1991). *Justice for Victims and Offenders: A Restorative Response to Crime*. Bristol, PA: Open University Press.; Findlay, M. (2001). Community Participation and the Integration within Legal Formalism in the South Pacific. *International Review of Penal Law*. 72(1-2), 495-513.

⁶⁰² See Chapter IV, Section 4

experiences, appear to be predicated upon an erroneous expectation of formality. Victims expected greater formality or similarity to the traditional courtroom processes. This expectation of formality or court room procedure, and the inability of the restorative justice process to fulfil such expectations, clearly resulted in negative experiences for victim participants.⁶⁰³ Such comments appear to contradict assertions within existing literature that restorative justice delivers informal conflict resolution capable of conferring benefits which the traditional criminal justice process cannot.⁶⁰⁴

Additionally, comments regarding the presence of a uniformed police officer during the restorative meeting, and the perception held by victims contributes directly to the debate surrounding police participation in restorative justice practices.⁶⁰⁵ Such debate has included normative opposition asserting that police facilitation concentrates power within one institution.⁶⁰⁶ These concerns include the inability of police to operate as neutral facilitators,⁶⁰⁷ implications of net widening,⁶⁰⁸ and the abuse of punitive functions of control.⁶⁰⁹ The restorative justice practice within which this research was focussed utilised the police during the restorative justice meeting as passive actors rather than the facilitator of the conference. This reflected the practice of Family Group Conferencing in New Zealand.⁶¹⁰ Reiterating previous research,⁶¹¹ victims identified the police presence as being beneficial, sometimes essential for their participation. Whilst their uniformed presence

⁶⁰³ Again discussed in greater detail within Chapter IV.

⁶⁰⁴ Morris, T. & Trammell, R. (2011). Formal and informal justice and punishment: Urban law and rural mediation rituals in Yemen. *Race and Justice*. 1(2), 131-153.; Beck, E., Warner, B., & Ohmer, M. (2010). Linking informal social control and restorative justice: moving social disorganization theory beyond community policing. *Contemporary Justice Review*. 13(4), 355 - 369.; Dzur, A., (2011). Restorative justice and democracy: Fostering public accountability for criminal justice. *Contemporary Justice Review*. 14(4), 367-381.

⁶⁰⁵ Moore, D. & O'Connell, T. (1994). *Family Conferencing in Wagga Wagga: A Communitarian Model of Justice*. In C. Alder and J. Wundersitz (eds.), *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism?* (pp. 15-44). Canberra: Australian Institute of Criminology.; Daly, K. & Hoyle, C. (2001)

⁶⁰⁶ Blagg, H. (1997).; Cuneen, C. (1997).; Ashworth, A. (2002).; Roch, D. (2003).

⁶⁰⁷ White, B. (1994).; Roche, D. (2003).

⁶⁰⁸ O'Mahony, D., & Doak, J. (2004).

⁶⁰⁹ Sandor, D. (1994). The thickening blue wedge in juvenile justice. In C. Adler and J. Wundersitz (eds.), *Family Conferencing and Juvenile Justice: the way forward or misplaced optimism?*. Canberra: Australian Institute of Criminology.

⁶¹⁰ Walgrave, L. (2008). *Restorative Justice, Self-Interest and Responsible Citizenship*. Cullompton, UK: Willan.

⁶¹¹ Hoyle, C. et al (2002).

appears to contribute to the expected authority and formality of the process,⁶¹² victims additionally expected the police officers presence and expressed concerns regarding the negative impact which they believed their absence would precipitate. The inclusion of a police presence throughout the restorative panel again appears inconsistent with the purist theories of restorative justice. However, when examined in light of the cultural context of this scheme, arising out of discontent following the closure of a court, the elements of restorative culture which would be carried into practice would involve those which are more readily reconcilable with more formal conflict resolution. Furthermore, those elements which would be excluded by the practice's culture carriers would obviously be those which are inconsistent with the more formal justice methods, such as the complete exclusion of criminal justice agents or the complete empowerment of stakeholders.⁶¹³

Such data suggests that victim expectations of the restorative justice process hold the potential to impact significantly upon their experiences of the practice. The importance of expectations and their impact upon victim experiences is emphasised by claims that restorative justice improves the position of victims within the criminal justice system, rectifying those deficiencies of the traditional process. However, it would appear that the improvement of victims' position may only be attainable through processes perceived and experienced as being beneficial. It is suggested that as victim experiences may be significantly influenced by erroneous or unfulfilled expectations, the management of those expectations is as important to successful restorative processes as the preparation of participants.⁶¹⁴ However, whilst the expectation-reality gap is relevant to victim experiences,

⁶¹² Braithwaite, J. (1994).; O'Mahony, D. et al (2002).

⁶¹³ Christie, N. (1977).

⁶¹⁴ Vos, B., Umbreit, M. & Coates, R. (2005). Victim Offender Mediation: Evidence Based Practice Over Three Decades. In L. Moffitt & R. Bordone (eds.), *The Handbook of Dispute Resolution* (pp. 455-470). Jossey Bass Publishers.; Welsh, B., & Farrington, D. (2006). *Preventing Crime: What Works for Children, Offenders, Victims, and Places*. New York: Springer Publishing.; Umbreit, M. & Coates, R. (2006). Restorative Justice Mediated Dialog. In M. Harrman, (ed.), *Handbook of Mediation: Bridging Theory, Research, and Practice* (pp. 175-188). London, UK: Blackwell Publishing.; McBroom, A. (2009). The benefits, costs, and risks of severe violence dialog: A theoretical analysis. *Contemporary Justice Review*. 12(2), 147-155.; Noll, D., & Harvey, L.

it is also accepted that, due to the nature of restorative justice participation being both complex and multifaceted, it is not the only aspect which appears to influence victim experiences, or indeed the most significant factor in victim assessments of restorative justice practices.

4. Implications of this research

This section identifies the potential implications of the conclusions asserted within this thesis for future research and policy development. Despite the limitations, this research nevertheless presents important implications for future restorative justice policy development and successful implementation within the criminal justice system of England and Wales. These implications are identified and discussed with reference to recent policy initiatives of the Conservative-Liberal Democrat Coalition Government. Following this, areas in need of further exploration are identified due to the limitations inherent within the aims and objectives of this study. Crucial among these recommendations is the extent to which the commodification of restorative justice paradigm by individual practice's culture carriers should be recognised and acknowledged within future implementation and research.

i. Implications for future Policy and Practice

Notwithstanding the need to apply the findings of this research in an appropriate manner, it identifies core messages and implications for the future policy development and implementation of restorative justice practices within England and Wales. This section

(2008). Restorative Mediation: The Application of Restorative Justice Practice and Philosophy to Clergy Sexual Abuse Cases. *Journal of Child Sexual Abuse*. 17(3/4), 377-396.

identifies two broad implications for future restorative practice, the education of participants and the role of the police.

Coalition government policy identifies the restorative justice practice detailed in this thesis as being a desirable method of implementation. This implementation is seen to embody current priorities of ‘swift justice’ and use of effective, locally-based solutions,⁶¹⁵ and community based approaches to give victims a greater say in the resolution of crime and in justice outcomes.⁶¹⁶ Restorative justice initiatives additionally complement recently reiterated plans to tackle low level offending and anti-social behaviour.⁶¹⁷ Furthermore, recent policy has explored the use of restorative justice as part of the pre-sentence process,⁶¹⁸ operating as a diversionary measure for first-time and low level offending. In pursuit of these objectives, Coalition policy identifies Neighbourhood Justice Panels as an effective method of restorative practice. Such panels utilise the same methods of practice as the scheme examined within this thesis. Such initiatives form part of wider policies devolving criminal justice to a local level, providing victims and communities with a central role in the delivery of justice through collective deliberation regarding the resolution of the offence.⁶¹⁹ Such Neighbourhood Justice Panels are described as;

“A partnership between local agencies, police and local authorities, and the local community. They seek to address anti-social behaviour and low level offending where this can appropriately be dealt with in and by the community, through a restorative solution

⁶¹⁵ Ministry of Justice (2012) *Swift and sure justice: the government’s plans for reform of the criminal justice system*. Presented to parliament by the secretary of state for justice by command of her majesty. (2012) p.6

⁶¹⁶ *Testing neighbourhood resolution panels, a specification to inform expressions of interest*, July 2011, Ministry of Justice, London.

⁶¹⁷ *Putting Victims First - More Effective Responses to Anti-Social Behaviour*, Cm 8367, Home Office, May 2012.

⁶¹⁸ *Swift and sure justice: the government’s plans for reform of the criminal justice system*. (2012). Presented to parliament by the secretary of state for justice by command of her majesty.

⁶¹⁹ *Neighbourhood resolution panels*. (2011). London, UK: Home Office.

focused on addressing the needs of the victim, repairing the harm done to the community, and avoiding unnecessary criminalisation (particularly of young people).”⁶²⁰

Such policy statements clearly identify restorative justice as being high on the Coalition agenda for future criminal justice reform. Advocated as a victim centric policy offering benefits including the improvement of victims’ position within the justice system, restorative justice policy does not appear to rely upon its potential for offender reform, potentially due to its impact on re-offending being less clear.⁶²¹ It is described as providing a voice for victims, offering opportunities for local communities to participate in justice and increasing public confidence in the police.⁶²² Those restorative practices which pursue the objectives highlighted by government policy will necessarily involve the implementation of different aspects of the restorative paradigm to offender centric practices or those focussed upon informal conflict resolution. In light of this commodification, recognition of the specific aims and objective of each restorative practice in addition to their cultural context is essential to assist in the differentiation of practice specific empirical findings arising from the actions of individual culture carriers.

Whilst victim participation levels among the restorative practice in which this research was conducted were high, low stakeholder participation continues to obstruct the implementation of restorative justice practices within England and Wales.⁶²³ Despite the efforts of the restorative scheme at location A to increase their media presence and subsequently educate the surrounding community, data demonstrated low levels of awareness

⁶²⁰ *Swift and sure justice: the government’s plans for reform of the criminal justice system*. (2012). Presented to parliament by the secretary of state for justice by command of her majesty.

⁶²¹ *Restorative Justice Projects: The National Evaluation of the Youth Justice Board’s Restorative Justice Projects*. London: Youth Justice Board.; Shapland, J., Atkinson, A., Atkinson, H., Dignan, J., Edwards, L., Hibbert, J., Howes, M., Johnstone, J., Robinson, G. & Sorsby A. (2008). *Does restorative justice affect reconviction? The fourth report from the evaluation of three schemes*. Ministry of Justice Research Series 10/08

⁶²² Home Office green Paper. July (2008). *From the neighbourhood to the national: Policing our communities together; Policing in the 21st Century: Reconnecting police and the people. Summary of consultation responses & next steps*. Home Office.; *Restorative Justice Projects: The National Evaluation of the Youth Justice Board’s Restorative Justice Projects*. London: Youth Justice Board.; Shapland, J. et al. (2008).

⁶²³ Victim participation of 20%, taken from: Ceredigion Youth Offending Service. (2011). *Tackling knife crime together – a review of local anti-knife projects*.

of victim participants prior to their referral. Such limited awareness is similarly reflected within recent research studies.⁶²⁴ This limited awareness and understanding of restorative justice and its associated benefits may offer an explanation into low engagement levels,⁶²⁵ and its rectification may offer a potential solution for increasing victim participation within future implementation. This research suggests that participant education is essential for the successful implementation of restorative practices both for increasing participation levels and the formation of accurate expectations of the process. Victim participation is identified as a central aim within recent policy, and raising awareness of restorative theory and practice may assist with the increasing of victim participation. Through increasing general awareness of restorative justice theory and practice, the participation levels among restorative justice schemes may improve. Whilst contemporary practices attempt to secure victim participation by providing information via letters of invitation,⁶²⁶ data presented within this thesis repeatedly demonstrates that such methods of contact are insufficient to rectify victims' limited awareness and to secure their participation. Better use of the preparatory meeting, for both preparing the participant and securing their engagement in the process, may offer a method of increasing victim participation within restorative justice practices. This thesis has demonstrated that the role of gatekeepers is crucial in the formation and management of expectations. Future implementation must ensure that relevant gatekeepers are sufficiently trained to enable provision of accurate information which forms and manages victim expectations. Furthermore, the reliance placed upon gatekeepers by victim participants suggests that the information provided by those gatekeepers should be acknowledged as being specific to the individual restorative practice, due to the selection of individual aspects

⁶²⁴Jacobson, J. & Kirby, A. (2012). *Public attitudes to youth crime, report of focus group research*. Institute for Criminal Policy Research, Occasional Paper 105, London: Home Office.

⁶²⁵Sherman, L & Strang, H. (2007). *Restorative Justice, The Evidence*. The Smith Institute; Nicol, W. Kirkwood, S. & MacFarlen, L. (2006). *Youth Justice Services Evaluation report*. SACRO. http://www.restorativejusticescotland.org.uk/YJ_Eval_Report_04-05.pdf

⁶²⁶Kinsella, B. (2011). *Tackling knife crime together – a review of local anti-knife projects*. Executive summary, Feb, 2011, London, Home Office.

of the restorative paradigm. Those practices implemented to increase victim participation will necessarily involve the selection of elements of the restorative justice paradigm which are most appealing to potential victim participants. This commodification will necessarily be different from that undertaken within a restorative justice practice focussed upon offender rehabilitation or community reconciliation, as different aspects of the restorative paradigm will be more conducive to the fulfilment of those different aims and objectives. As such the commodification arising from individual objectives should be identified and the implications arising from such commodification acknowledged. This unacknowledged status of commodification within existing practice may result in restorative practices being perceived universally, with little distinction between practices possessing divergent aims and objectives and necessarily conveying significantly different aspects of restorative culture via their individual culture carriers.

Furthermore, the identification of victims' negative expectations relating to the offender whilst possessing positive expectations regarding the process holds particular significance for the implementation of restorative practices involving voluntary participation of victims. Practitioners may secure greater participation levels through promoting restorative justice upon those benefits of restorative justice which victims perceive as being most likely to be delivered. As will be recalled, data presented throughout this thesis indicates that procedural elements of the restorative justice process are valued more highly by victims than those aspects reliant upon offender contrition. This contrasts with restorative literature which focuses upon the victim-offender interaction, such as expressions of apology and remorse,⁶²⁷ and collaborative deliberation regarding the outcome of the process.⁶²⁸ If such

⁶²⁷Leonard, L. & Kenny, P. (2011). Measuring the effectiveness of restorative justice practices in the Republic of Ireland through a meta-analysis of functionalist exchange. *The Prison Journal*. 91(1), 57-80.; Kilty, J. (2010). Gendering violence, remorse, and the role of restorative justice: deconstructing public perceptions of Kelly Ellard and Warren Glowatski. *Contemporary Justice Review*. 13(2), 155-172.

⁶²⁸Roche, D. (2003).; Bazemore, G., Gilbert, M. & Choi, J. (2012). Review of research on victims' experiences in restorative justice: Implications for youth justice. *Children and Youth Services Review*. 34(1), 35ff.; Hoyle, C.,

aspects of the process are both valued more highly and perceived as being more likely to be fulfilled practitioners' should focus upon those elements of the process when securing victim engagement. However, such negative expectations of the offender may again arise from a limited understanding of the restorative process and may be successfully challenged through preparatory stages focussing upon participant education as opposed to the multiple objectives pursued by the restorative practice studied.

Findings regarding the impact of victim expectations upon their experiences of the restorative process also hold significant implications for practice. Where Restorative justice is implemented with the intention to increase victim satisfaction,⁶²⁹ and place "the victim's needs at the centre of the criminal justice process",⁶³⁰ this should be acknowledged due to the implications arising from the specific commodification of the restorative justice paradigm by individual practice's culture carriers. In pursuit of those objectives, the extent to which unfulfilled expectations may impact negatively upon victim experiences is of particular relevance due to its potential to reduce victim satisfaction with the process. Recent policy literature clearly identifies the avoidance of surprises as being of crucial importance for the success of restorative practices,⁶³¹ but with little explanation or justification. The importance accorded to preparation,⁶³² and the avoidance of surprises within policy literature is reiterated by the findings of this research, which offers an explanation into why such elements of restorative practice should be emphasised in pursuing improvements to the victim's position and securing higher satisfaction.

& Walters, M. (2012). Exploring the everyday world of hate victimization through community mediation. *International Review of Victimology*. 18 (1), 7-24.

⁶²⁹ The YJB's publication Key Elements of Effective Practice: Restorative Justice defines the key aims or outcomes of restorative justice as: victim satisfaction <http://www.justice.gov.uk/youth-justice/working-with-victims/restorative-justice>; AND Neighbourhood resolution panels pdf .; Shapland, J., Atkinson, A., Atkinson, H., Chapman, B., Dignan, J., Howes, M., Johnstone, J., Robinson, G. & Sorsby, A. (2007). *Restorative justice: the views of victims and offenders: the third report from the evaluation of three schemes*. MOJ Research Series 3/07.

⁶³⁰ Ministry of Justice, (2011). *Initial findings from the review of the use of out-of-court disposals*. Out of court disposals report. available online; Initial findings from the review of the use of out-of-court disposals

⁶³¹ Wachtel, T. (1997). *Real Justice. How can we revolutionise our response to wrongdoing*. Pipersville, Pennsylvania: The Pipers Press,

⁶³² Kinsella, B. (2011).

Such focussed education of participants would appear to address those aspects of the restorative practice which were experienced negatively. Negative experiences such as informality or assuming positions of responsibility arose due to erroneous expectations which remained unchallenged during the preparatory meetings. This negative reception of unexpected elements of the restorative justice process is reflected within Government research which identifies victim satisfaction with conditional cautioning as being highest when its aims were fully explained.⁶³³ This provides an example of the management of victim expectations in criminal justice practices which this thesis demonstrated is of central importance to successful restorative justice practices. Within this thesis victims repeatedly criticised the informal arrangements of the restorative justice meeting, drawing comparisons with a court-room setting as being a preferable location. Within policy literature the restorative process is explicitly intended to not possess any resemblance to a courtroom proceeding,⁶³⁴ however the focus by victims upon this arrangement again illustrates the impact of erroneous expectations which remain unchallenged. This further illustrates the crucial position which practice specific, in-depth preparation occupies within restorative justice practices. Such an explanation and preparation of the participant cannot feasibly occur within the ‘street RJ’ initiatives which deliver instant resolution to minor offences piloted by numerous police forces. Again, despite the Coalition’s commitment to the discussion of informal restorative work with the police,⁶³⁵ it would appear that such initiatives would not generate the increased satisfaction among victims unless their erroneous expectations are challenged and their understanding of the restorative justice process significantly improved. Similar results are demonstrated through victims’ reluctance to assume a decision making role during the restorative meeting, with numerous victim participants stating that such

⁶³³ Office for Criminal Justice Reform (2007) *Conditional Cautions: Key findings from a victim satisfaction*

survey,

<http://www.cjsonline.gov.uk/downloads/application/pdf/Victim%20satisfaction%20Dec%202007.pdf>

⁶³⁴ Wachtel, T. (1997).

⁶³⁵ Jacobson, J., & Kirby, A., (2012). *Public attitudes to youth crime, report of focus group research*. Institute for Criminal Policy Research, Occasional Paper 105. London, UK: Home Office.

requests had a detrimental impact upon their experience of the restorative process. Again such negative experiences resulted from the unexpected nature of the request. However, the ability of restorative practices to deliver those oft cited benefits, without recourse to victims assuming decision making responsibility, may offer a solution to those normative, due process concerns opposing greater implementation of restorative practices.⁶³⁶

Furthermore, previous restorative practices appear to have proceeded upon the assumption that all participants are able to perform within a restorative justice meeting. However, this assumption is challenged by the findings of this research as numerous victims expressed concerns over that which they were required to do during the process, appearing to remain confused over what was required of them. Again, it is suggested that greater preparation and education of participants will reduce those unknown aspects of the restorative process, alleviating those concerns of victims and enabling fuller participation in the restorative process. This thesis suggests that such education is best delivered through extensive facilitator-victim interaction, undertaken during the previously described preparatory meetings.⁶³⁷ This method of securing participation whilst simultaneously educating victims and managing their expectations appears to be a preferable option to attempting to contact participants through letters of invitation, utilised in numerous contemporary restorative practices within England.⁶³⁸

⁶³⁶ Ashworth, A. (2002).; Roche, D. (2003). The International Library of Essays in Law & Legal Theory, Second Series. Aldershot, Hants, England: Dartmouth/Ashgate.; Ikpa, T. (2007). Balancing Restorative Justice Principles and Due Process Rights in Order to Reform the Criminal Justice System. Washington University *Journal of Law & Policy*. 24, 301-325.; Crawford, A. (2009). Governing through anti-social behaviour. Regulatory challenges to criminal justice. *British Journal of Criminology*. doi:10.1093/bjc/azp041.; Skelton, A. & Frank, C. (2004). How Does Restorative Justice Address Human Rights and Due Process Issues?. In H. Zehr & B. Toews (eds.), *Critical Issues in Restorative Justice* (pp. 203-213). Monsey, New York and Cullompton, Devon, UK: Criminal Justice Press and Willan Publishing.

⁶³⁷ See Chapter 2, Section 4.

⁶³⁸ Miers, D. (2001). *An international Review of Restorative Justice*. Crime reduction research series paper 10, Home Office: London; Miers, D. Et al (2001). *An exploratory evaluation of restorative justice schemes*. Crime reduction research series paper 9, Home Office: London; Shapland, J. et al. (2004) *Implementing restorative justice schemes (crime reduction programme) A report on the first year*. Home Office Online Report 32/04. Home Office: London.

Preceding chapters clearly identify that victim experiences of restorative justice are mixed, with significant divergence between aspects which restorative theory states are of central importance and benefit and those which victims value. This divergence between restorative theory and victim values offers an important consideration for future implementation. If restorative justice is delivered as a victim centric policy,⁶³⁹ then those elements which victims perceive as essential for their participation must be met. Furthermore, restorative justice may need to be promoted on different values, emphasising those elements which are valued by victims as opposed to those advocated within theoretical literature.

One finding of this thesis which appears to directly contradict restorative justice literature and holds significant implications for future practice relates to the involvement of the police. Despite theoretical claims that restorative practices should operate independently from the criminal justice system, away from control by justice professionals,⁶⁴⁰ victims repeatedly identified the police presence during the restorative meeting as being essential.⁶⁴¹ Their presence as passive participants within this research appears to offer one solution beyond Hoyle's suggestion that police led restorative justice will continue in the UK, due to no alternative that does not possess its own unique problems.⁶⁴² Whilst she suggests a pragmatic approach should be adopted, addressing the regulation of police led restorative justice, the data of this research suggests that a preferable solution would be through involvement of police in restorative practices as passive participants. Such passive participation appears to fulfil those needs of victims, through the increased authority, gravitas

⁶³⁹ Kinsella, B. (2011).

⁶⁴⁰ Christie, N. (1977).

⁶⁴¹ For an extended discussion of this point see Chapter IV Section 2, i.

⁶⁴² Hoyle, C. (2007). Policing and restorative justice. In G. Johnstone and D. Van Ness (eds.), *Handbook of Restorative Justice* (pp.292-311). Devon: Willan Publishing.

and formality of the proceedings,⁶⁴³ whilst avoiding those concerns of police culture and impartiality.⁶⁴⁴

Recent policy literature has identified that the practicalities of restorative justice relationship with the formal criminal justice process is important.⁶⁴⁵ However, the findings of this research suggest that the relationship of restorative practice and the formal justice system is more nuanced than mere separation or integration. The commodification of the restorative paradigm offers numerous opportunities for restorative practices to pursue objectives which may have previously appeared incompatible with those more traditional interpretations of restorative justice philosophy. Victims appear to desire a visible presence of the formal mechanisms of the justice system, such as the police, but in a passive capacity, without control of the process. Policy identifies strategies most likely to improve confidence in the police is community engagement, such as restorative justice.⁶⁴⁶ Furthermore, the use of police within such restorative practices is forwarded as a method of improving victim perceptions of the criminal justice system.⁶⁴⁷ However, in addition to supporting existing research, the position occupied by police within this research appears to rectify the longstanding debate regarding the detrimental implications of police participation (through police facilitation of restorative practices).⁶⁴⁸ Such concerns have included their perceived impartiality, the infiltration of police culture and stigmatising language and treatment.⁶⁴⁹ These serve to

⁶⁴³ Hoyle, et al (2002).; Braithwaite (1994).

⁶⁴⁴ Galligan, D. (1996). *Due Process and fair Procedures*. Oxford: Clarendon Press.; White, R. (1994). Shame and reintegration strategies: individuals, state power and social interests. In C. Alder and J. Wundersitz (eds.), *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism?* Canberra: Australian Institute of Criminology.

⁶⁴⁵ *Restorative Justice Investigated*. Restorative Justice Working Group, ACPO, Crime committee, Nov. 2000

⁶⁴⁶ Home Office green Paper (2008). “*From the neighbourhood to the national: Policing our communities together*”

⁶⁴⁷ Rix, A., Jashua, F., Maguire, M. & Morton, S. (2009). *Research Report 28 – Key Implications, “Improving Public Confidence in the Police, a review of the evidence”* 2nd edition, London, UK: Home Office.

⁶⁴⁸ Young, R. (2001). ‘Just Cops Doing ‘Shameful’ Business? Police-led Restorative Justice and the Lessons of Research. In A. Morris, & G. Maxwell, (eds.) *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (pp. 195-226). Oxford-Portland Oregon: Hart Publishing.; Young, R. & Hoyle, C. (2003). Restorative justice and punishment. In S. McConville (ed.), *The Use of Punishment*. Cullompton: Willan Publishing.

⁶⁴⁹ Young, R. (2001).

undermine central restorative philosophy.⁶⁵⁰ The passive participation of police in restorative justice practices presents a method of increasing public confidence and improving police-public relations,⁶⁵¹ without the additional workload and avoiding Due Process objections to police administered restorative justice.

Recent restorative justice implementation has focussed heavily upon restorative practices among police activities, such as restorative cautioning or police led restorative conferencing.⁶⁵² Additionally, the use of police in a more passive participatory role, as opposed to running the restorative practice appears to reiterate Coalition policy emphasising the importance of independent mediators and facilitators within restorative practices.⁶⁵³ Whilst such comments may refer to independence during the restorative meeting itself, avoiding biased interaction with the victim against the offender, it is suggested that the perceived independence of the facilitator is equally important, as identified by victims' comments within this thesis.

This thesis suggests that such practices may deliver better results if their implementation and practice was removed from the police, relying upon separate organisations such as local government or charitable organisations. However, such a departure from police implementation would require a re-examination of current policy which provides no dedicated budget to fund community based restorative justice schemes.⁶⁵⁴ During this research, victims repeatedly asserted their desire for a police presence, but not control of the restorative process. This questions the extent to which recent implementation of restorative cautioning and 'Street RJ' within police constabularies are capable of fulfilling

⁶⁵⁰Weitekamp, M. (2001).

⁶⁵¹Policing in the 21st Century: Reconnecting police and the people. Summary of consultation responses & next steps. Home Office, Dec. 2010.

⁶⁵²Breaking the cycle: effective punishment, rehabilitation and sentencing of offenders. Green Paper evidence report, December 2010, Ministry of Justice, London.

⁶⁵³*Restorative Justice Investigated*. Restorative Justice Working Group, ACPO, Crime committee, Nov. 2000

⁶⁵⁴ Draft Protocol for community-based restorative justice schemes: The Government response to the committee's first report of session 2006-07, ordered by the House of commons Northern Ireland Affairs Committee, 30 April 2007.

their aims of improving victims' position within the justice system, increasing victim satisfaction and increasing public confidence in the police.⁶⁵⁵

Restorative justice is advocated within the Coalition Governments policy literature as an informal addition to the out-of-court disposals landscape.⁶⁵⁶ Furthermore, despite a desire to increase formal records of participation, such policies emphasise their desire to maintain the informal nature of contemporary restorative practices.⁶⁵⁷ However, if such practices are implemented within a victim centric philosophy, with the objectives of increasing victim satisfaction with the process, informality was repeatedly discussed negatively by victims throughout this thesis, without recourse to its unexpected nature. Such desires to maintain the informality of the process may be inferred from reports identifying restorative justice as being appropriate for low level offences which may not warrant a formal court process,⁶⁵⁸ however, as stated data presented within this thesis demonstrates that victims do not desire or appreciate the informal aspects of the restorative process, preferring more formal methods.

Past studies have identified the locations used by previous restorative justice practices as emphasising its existence as a formal punishment, through use of Youth Offending Team offices and a community hall. Similar venues were utilised for the restorative practice during this research however, victims repeatedly identified the venue as being too informal, with reference to meetings in a police station being preferable due to its associated formality.⁶⁵⁹ This suggests that victims' responses within this thesis indicate a desire for greater integration of restorative justice with the formal criminal justice system. Concerns regarding the presence of police during the restorative process and the location of restorative practices within institutions such as police stations are not as problematic as some literature

⁶⁵⁵Shapland, J. et al. (2008).

⁶⁵⁶Ministry of Justice (2010). Initial findings from a review of the use of out-of-court disposals, A report by the office for criminal justice reform, Feb 2010. London,

⁶⁵⁷Jacobson, J. & Kirby, A. (2012). *Public attitudes to youth crime, report of focus group research*. Institute for Criminal Policy Research, Occasional Paper 105, London: Home Office.

⁶⁵⁸ Ibid

⁶⁵⁹ Fox, D. (2005). *An examination of the implementation of restorative justice in Canada and Family Group Conferencing in the UK*. British Association of Social Workers, Venture Press: Birmingham.

suggests.⁶⁶⁰ Such restorative justice practices appear to be central to Police Triage projects, with initial referral located in police custody suite.⁶⁶¹ However such a location does not appear to be problematic as a substantial number of victims within this thesis desired a more formal location, with a police presence (although as stated not as a facilitator).

ii. Application of Findings

This research offers new empirical data regarding victim expectations and experiences of a restorative justice practice utilising direct victim-offender interaction within England. Additionally, it illustrates the extent to which the commodification of the restorative justice paradigm occurs, with aspects of the philosophy selected or excluded from implementation by those culture carriers within each restorative practice. The findings can be used to inform future research and work with similar restorative justice practices. However, as with any research it is acknowledged that this study possesses limitations. Firstly, it suffers from those limitations inherent within qualitative research methodologies. Whilst offering important new findings in the area of victim interaction with restorative justice, this exploratory qualitative study is limited to those initial insights. Specifically, the data and findings of this research are not capable of general application to larger populations, and only provide an insight into the population within which this research was conducted. Whilst the research attempted to include all cases within the restorative justice process, there remains limited ethnic representation within the sample frame. Furthermore, the restorative practice restricted referrals to minor crimes,⁶⁶² thus limiting the findings of this research to similar offences and offenders. Therefore, findings do appear transferable to similar situations, within similar socio-demographic populations, implemented with similar, minor offences. Additionally, it is

⁶⁶⁰ O'Mahony, D. & Doak, J. (2004). *Restorative Justice -- Is More Better?: The Experience of Police-Led Restorative Cautioning Pilots in Northern Ireland* Howard Journal of Criminal Justice. 43(5), 484-505.

⁶⁶¹ Institute for criminal policy research, Birkbeck, University of London. (2012). *Assessing Young People in Police Custody: An examination of the operation of triage schemes*. Occasional paper 106.

⁶⁶² See chapter II for greater detail on the referral criteria of the restorative justice scheme.

accepted that an inherent bias will always exist within questionnaire construction and expression, despite researcher attempts to minimise these sources of bias.⁶⁶³ Additionally, this research suffers from the inherent limitation of self-selection bias present within all restorative justice practices which are reliant upon voluntary participation.⁶⁶⁴ This research was undertaken with an exclusive focus upon one implementation of restorative justice. It was submitted within Chapter II that due to the diverse nature of restorative practices, comparability between different practices is of limited value.⁶⁶⁵ The true value of this study is the provision of a detailed and in-depth examination of a restorative practice which can be described as ‘truly restorative’.⁶⁶⁶ In so doing it fulfilled the original aims of this research, providing an exploratory insight into the expectations and experiences of victims participating in a restorative justice practice.

iii. Future Research

Acknowledging the parameters of this research project, data presented within this thesis identifies areas of future research. The theoretical debate regarding the apparent incompatibility of restorative and retributive justice appears to be inconsistent with the findings of this research and should be revisited, in light of the prevalence of

⁶⁶³Creswell, J. & Clark, V. (2011). *Designing and Conducting Mixed Methods Research*. London, UK: Sage.; Wilson, N., & McClean, S. (1994). *Questionnaire design: a practical introduction*. Ulster, UK: University of Ulster Press.; Babbie, E. (2010). *The Practice of Social Research*. Belmont, CA: Wadsworth Cengage Learning.; Oppenheim, A. (1992). *Questionnaire Design*. London, UK: Cassell.; Neuman, W. (2006). *Social Research Methods, Qualitative and Quantitative Approaches*. London, UK: Pearson.

⁶⁶⁴ Latimer, J. Dowden, C. & Muise, D. (2005).; McCold, P. (2008). Evaluations of a restorative Milieu: Restorative practices in context. In H. Miller, (ed.), *Restorative Justice from theory to practice*.; Barton-Bellessen, S. & Honser, R. (2012). *Community based corrections: A text/reader*. London, UK: Sage.; Leonard, P. (2010). An introduction to restorative justice. In E. Beck, N. Kropf, & P. Leonard, (eds.) *Social work and restorative justice, skills for dialogue, peacemaking and reconciliation*. New York: OUP USA.; O’Connell, T., Wachtel, B. & Wachtel, T. (1999). *The new real justice training manual; conferencing handbook*. Real Justice, The Pipers Press: Pipersville: Pennsylvania.

⁶⁶⁵Previously detailed within Chapter II.

⁶⁶⁶Dignan, J. & Lowey, K. (2000). *Restorative Justice Options for Northern Ireland*.; Daly, K. (2001). Conferencing in Australia and New Zealand: variations, research findings and prospects. In A. Morris, & G. Maxwell, (eds.), *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*. Hart: Oxford.; Van Ness, D. & Strong, K. (2010). *Restoring Justice: An introduction to restorative justice*. London: Anderson Press.; Daly, K. (2002). Restorative justice: The real story, *Punishment & Society*. 4(1), 55-79.; Gray, P. (2003). *An Evaluation of the Plymouth restorative justice programme*. Department of social Policy and Social Work, University of Plymouth.

commodification and the extent to which culture carriers such as restorative facilitators select aspects of the restorative paradigm to implement within individual practices. Data within this study suggests that victims participating in restorative justice practices which are linked to the traditional criminal justice system through a police presence continue to report the experience as being beneficial. Furthermore, many victims appear to desire greater integration with the criminal justice system and traditional retributive paradigms, whilst remaining positive regarding their restorative experiences. Despite recent literature advocating a departure from establishing a final definition of restorative justice in favour of practice research,⁶⁶⁷ the data of this thesis suggests that such a definition and clarity is essential if gatekeepers are to provide participants with accurate information upon which to base their expectations of the process, which in turn may impact upon their experiences.

Furthermore, this apparent compatibility of restorative and retributive justice holds implications for future implementation, as restorative justice appears successfully deployed within the existing criminal justice process, subject to the selection and exclusion of particular aspects of the restorative justice paradigm by culture carriers. Those normative concerns regarding due process repeatedly asserted by those opposing the implementation of restorative justice practices within the criminal justice system may also be addressed through the data of this research. Due process considerations, focussing upon victim deliberation and decision making power within restorative justice practices would not appear to be relevant in practices in which victims do not assume a decision making position. Whilst contradictory to central elements of numerous restorative theories,⁶⁶⁸ victims within this research repeatedly stated their desire not to assume such a decision making role, preferring that the facilitator undertake those aspects of the process.⁶⁶⁹ This lack of desire in assuming a decision making

⁶⁶⁷McAlinden, A. (2012). Transforming Justice: Challenges for restorative justice in an era of punishment based corrections. *Contemporary Justice Review*. 14 (4), 383-406.

⁶⁶⁸ Christie, N. (1977).

⁶⁶⁹ See chapter IV, Section 4

role during the restorative justice process is reflected within previous research. This questions the extent to which restorative practices require such an assumption of responsibility by the victim. If practices such as these are capable of delivering benefits to victims of crime which the traditional criminal justice system cannot, without victims assuming a decision making role, it would remove those normative concerns regarding due process rights and vengeful outcomes, upon which many theorists oppose restorative justice implementation.⁶⁷⁰

It is suggested that a fuller, qualitative examination of those aspects of the restorative process which participants' value, which appear to contradict restorative justice theory, is necessary. Victims' reliance upon traditional criminal justice system imagery, demonstrated within Chapter III and IV, may result from reliance upon familiar aspects of the justice system, due to the unfamiliar concept of informal conflict resolution which restorative justice represents. As such, the extent to which these contradictions represent an explicit rejection of restorative justice theory by victims or, reflect a persistent limited or flawed understanding of restorative justice theory is unresolved. This can only be addressed through future qualitative empirical work. Due to the inductive nature of this research such additional exploration of concepts and emergent themes grounded within the empirical data analysis was not possible.

Whilst this research examined the expectations and experiences of victims participating in restorative justice practices, restorative interactions necessarily involve additional participants, specifically the offender. Future research should ascertain the extent to which the findings of this study exist within offender participants in similar restorative justice practices, or whether a divergence exists between victim and offender assessments. As stated within Chapter I, the ambiguity of restorative justice theory has resulted in a

⁶⁷⁰Zehr, H., & Mika, H. (2010). Fundamental Concepts of Restorative Justice. In C. Hoyle (ed.), *Restorative justice: critical concepts in criminology (Vol. 1)*. London, United Kingdom: Routledge.; Ashworth, A. (2003). Is Restorative Justice the Way Forward for Criminal Justice. In E. McLaughlin, R. Fergusson, G. Hughes & L. Westmarland (Eds.), *Restorative Justice: Critical Issues*. London, United Kingdom: Sage.; Morris, A., & Gelsthorpe, L. (2000). Something old, something borrowed, something blue, but something new? A comment on the prospects for restorative justice under the Crime and Disorder Act 1998. *Criminal Law Review*. January, 18-30.

proliferation of practices operating under the label of restorative justice. The extent to which the findings of this research are applicable to both victims and offenders participating in restorative justice practices which vary significantly from the model of implementation within this research should be established. Such data could then inform policy development and assist in the identification of those restorative practices which deliver greatest success.

Data discussed within Chapter IV clearly demonstrates a reticence among victim participants to depart from their traditional notions of retribution when participating in the restorative process. Despite the extensive preparatory stages undertaken under the auspices of educating participants regarding restorative theory and practice, this resistance persisted through victim comments regarding the purpose of the process and their desired outcome. Such comments repeatedly relied upon punitive retributive language. However, regardless of their punitive and retributive desires, victims continue to report positive experiences regarding their restorative process.

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Appendix A

Facilitator Guide

INTERNATIONAL INSTITUTE FOR RESTORATIVE PRACTICES UK OFFICE		RESTORATIVE PRACTICES FACILITATOR GUIDE	Acknowledged Harm /Accepted Responsibility
Ensure Good Preparation of all Participants			
Step 1	FAIR RESPECT ENGAGE SAFE HONEST	Welcome and introduction: (NB: Green Italics and ' / ' are options and when in (brackets) are explanation) "Welcome, as you know my name is and I have been asked to facilitate this meeting. (<i>Introduce participants if this is necessary.</i>)" "I have spoken to all of you about the incident (<i>briefly describe what happened.</i>)" ".....(<i>wrongdoer/s name/s</i>) has/have admitted his/her/their part. I remind you that you are here to discuss what has happened, not the character of anyone involved. I will invite you all to talk about how you and others may have been <i>affected / harmed / hurt</i> by what happened. This will help everyone understand what needs to be done to help <i>repair the harm caused / make things right.</i> "	
		Step 2	
		Start with wrongdoer/s: "I would like to start with " "What happened?" "What happened then?" (<i>repeating as necessary to fully unfold their story</i>) "What were you thinking about <u>at the time?</u> " "What have your thoughts been <u>since?</u> " "Who has been <i>affected / harmed / hurt</i> by what you did?" "In what way have they been <i>affected / harmed / hurt?</i> "	
		Step 3	
		In turn, invite (i) person/s harmed (<u><i>theme in views when not present</i></u>) (ii) their family/support people (iii) the wrongdoer/s family/support people to speak: "What happened?" "What happened then?" (<i>repeating as necessary to fully unfold their story</i>) "What did you think when you realised what had happened?" "What have your thoughts been <u>since?</u> " "How has this affected you and others?" "What has been the <i>hardest / worst</i> thing for you?"	
Step 4		Go back to wrongdoer/s: "You have just heard how (<i>person/s harmed name/s</i>) and others have been <i>affected / harmed / hurt</i> by what you did." "Is there anything you want to say at this time?" "Do you see that harm has been caused?" "Do you think something needs to be done to repair the harm done?"	
		Step 5	
Return to the person/s harmed (<u><i>theme in views when not present</i></u>) and then all other participants: "What would you like to see come out of today's meeting?" <u>(where appropriate, record any agreement made)</u>			
Step 6		Return to wrongdoer/s: "What do you <i>think / feel</i> about what has been said?" <i>Optional questions: "Would you do anything differently now?" / "What other choices could you have made?" / "What have you learned from this meeting?"</i> <u>(Summarise any agreement made)</u>	
		Step 7	
Give participants the opportunity to express positive outcomes: "What do you think about what has happened here today?"			
Step 8		Final invitations to speak—ask all: "Before I close the meeting, is there anything else anyone wants to say or ask."	
		Step 9	
Closing the meeting: "Thank you for participating in this meeting. I hope your time together has helped you deal with this matter."			
Step 10		Reintegration and refreshments after the conference Invite all participants to stay for refreshments and talk informally while you prepare the agreement/conclude paperwork etc.	
		Revised June 2007	

Appendix B

Participant Information Sheet



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Participant information sheet

“Restorative Justice: An Examination of the Expectations and Experiences of Participants.”

You are being invited to take part in a research study. Before you decide, it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with others if you wish. Ask if there is anything that is not clear or if you would like more information. Take time to decide whether or not you wish to take part.

Thank you for reading this.

What is the purpose of the study?

The aim of this study is to examine expectations and experiences of participants in restorative justice Schemes. The research is being undertaken as part of a PhD and may be referred to within future publications.

Why have I been chosen?

You have been chosen only because you are a participating in a restorative justice scheme, for no other reason.

Do I have to take part?

It is up to you to decide whether or not to take part. If you decide to take part you will be given this information sheet to keep and be asked to sign a consent form. If you decide to take part you are still free to withdraw at any time and without giving a reason. A decision to withdraw at any time, or a decision not to take part, will not affect the standard of care you receive in any way.

What will happen to me if I take part?

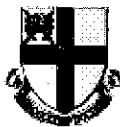
If you decide to take part, you will be given this information sheet to keep and asked to sign the consent form. This will give your consent for a researcher from the University of Chester to undertake research addressing both your expectations and your experiences of the restorative justice process. With your permission the interview will be audio taped. **No-one will be identifiable** within the written account of the research.

What are the possible disadvantages and risks of taking part?

There are no major disadvantages or risks foreseen in taking part in the study, although it is possible that participants may experience some inconvenience in taking time to participate. Discussing the process may also result in an emotional response; if this occurs the interview will be paused or suspended.

What are the possible benefits of taking part?

As a participant it is possible that you may welcome the opportunity to share and discuss your views and experiences of the restorative process. By taking part, you will be contributing to the understanding of restorative through sharing your views.



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What if something goes wrong?

If you wish to complain or have any concerns about any aspect of the way you have been approached or treated during the course of this study, please contact;

Dr Kathryn A. Dutton LLB (Bham) MSc (Edin.)
Senior Lecturer in Law
The University of Chester Law School
Allen Building
Parkgate Rd
Chester
CH1 4BJ

Direct Line: 01244 575555
Email: k.dutton@chester.ac.uk

Will my taking part in the study be kept confidential?

All information which is collected about you during the course of the research will be kept **strictly confidential** so that only the researcher carrying out the research will have access to such information.

What will happen to the results of the research study?

The results will be written up into a report for submission of the research project as assessment for a PhD. Individuals who participate **will not** be identified in any subsequent report or publication.

Who is organising and funding the research?

The Research is self-funded by the researcher in pursuit of a PhD. The School of Law at the University of Chester will be involved in organising and carrying out the study.

Who may I contact for further information?

If you would like more information about the research before you decide whether or not you would be willing to take part, please contact:

Jac Armstrong BA (Oxon),
The Allen Building,
University of Chester,
Parkgate Road,
Chester,
CH1 4BJ.

Email: jac.armstrong@chester.ac.uk
tel; 01244 575555
mob; 07958 001007

Thank you for your interest in this research.

Appendix C

Participant Consent Form



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Title of Project: "Restorative Justice: An Examination of the Expectations and Experiences Participants."

Name of Researcher: Jac Armstrong BA (Oxon),
The Allen Building,
University of Chester,
Parkgate Road,
Chester,
CH1 4BJ.

jac.armstrong@chester.ac.uk; ~~01244 574000~~; ~~01244 574000~~

Please initial box

- | | | |
|----|--|--------------------------|
| 1. | I confirm that I have read and understood the participant information sheet for the above study and have had the opportunity to ask questions. | <input type="checkbox"/> |
| 2. | I understand that names of participants will not appear in any final publications. | <input type="checkbox"/> |
| 3. | I agree to take part in the above study. | <input type="checkbox"/> |

Name of Participant

Date

Signature

Researcher

Date

Signature

(1 for participant; 1 for researcher)

Appendix D

Questionnaire



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"Restorative Justice: an Examination of the Expectations and Experiences of Participants"

Pre-Panel Expectation Questionnaire

Jac Armstrong of The University of Chester Law School is conducting research designed to examine the expectations and experiences of participants in Restorative Justice programmes.

It is hoped that the research will improve the general understanding of participants' views and experiences in this area.

I should be most grateful if you would help to achieve this aim by completing a short ANONYMOUS questionnaire.

This research is completely independent from the
Community Justice Panel,

its facilitators and the Restorative Process in which you are involved. Completing the questionnaire will not have any effect upon your participation and experience of the service provided by the Panel.

You do not have to take part in this study

but, if you do choose to help with the research your questionnaire will be completely anonymous and it will not be possible to identify you from your questionnaire responses. By completing the questionnaire you are also agreeing for the anonymous results to be used in my research.

**If you have any questions or require further information
please do not hesitate to contact me (further contact
details are at the back of this document).**

Thank you

Jac Armstrong

Tel: ~~01244 574111~~, mob: ~~01244 574111~~



PART A: ABOUT YOU

1. Gender: M / F

2. Age: _____

3. Have you been subject to offending behaviour at any point prior to the current offence?

Yes ☐

No ☐

PART B: ABOUT YOU & RESTORATIVE JUSTICE

1. What offence led to you being referred to the Community Justice Panel?

2. Were you aware of Restorative Justice Processes before your referral?

Yes ☐

No ☐

3. Please indicate your current level of understanding of Restorative Justice Processes, on a scale of 1 - 5 where 1 = no understanding at all and 5 = complete understanding

1

2

3

4

5



4. Do you feel well prepared for your restorative panel?

Please select a number on a scale of 1-5 where 1 = not prepared at all and 5 = completely prepared

1 2 3 4 5

5. Are there any areas of the Restorative Justice Process that you are still unsure about?

Yes ☐ No ☐

If 'Yes' please explain what areas you are unsure about:

C. Your Expectations of the Restorative Justice Process

1. What do you think WILL ACTUALLY happen at the panel? Please tick any that apply.

- | | | | |
|--|--------------------------|--|--------------------------|
| The offender will apologise | <input type="checkbox"/> | The offender will not apologise | <input type="checkbox"/> |
| The offender will take responsibility | <input type="checkbox"/> | The offender will not take responsibility | <input type="checkbox"/> |
| The damage caused will be repaired | <input type="checkbox"/> | The damage will not be repaired | <input type="checkbox"/> |
| The offender will show remorse | <input type="checkbox"/> | The Offender will not show remorse | <input type="checkbox"/> |
| The offender will change their behaviour | <input type="checkbox"/> | The offender will not change their behaviour | <input type="checkbox"/> |

Please state anything you think will happen which is not included above.



2. In your opinion, what is the most important thing that WILL happen at the panel

3. What, ideally, would you LIKE to happen at the panel?
Please tick any that apply.

To receive an apology
For the offender to show remorse
To confront the offender
To voice your opinion
To participate in the process

☐
☐
☐
☐
☐

To be treated fairly by the process
For the damage caused to be acknowledged
For the damage caused to be repaired
Reassurance it won't happen again
For the offender to take responsibility
For the offender to change their behaviour

☐
☐
☐
☐
☐
☐

Please detail anything else you **WOULD LIKE** to happen at the panel not included above:



4. A. please indicate with a circle how likely you think that each of the options will happen?

To receive an apology	very likely	quite likely	unlikely	very unlikely
To hold the offender accountable	very likely	quite likely	unlikely	very unlikely
To confront the offender	very likely	quite likely	unlikely	very unlikely
To voice your opinion	very likely	quite likely	unlikely	very unlikely
To participate in the process	very likely	quite likely	unlikely	very unlikely
For the damage caused to be acknowledged	very likely	quite likely	unlikely	very unlikely
For the damage caused to be repaired	very likely	quite likely	unlikely	very unlikely
To be treated fairly by the process	very likely	quite likely	unlikely	very unlikely
For the damage caused to be recognised	very likely	quite likely	unlikely	very unlikely
Reassurance it won't happen again	very likely	quite likely	unlikely	very unlikely

Anything else you WOULD LIKE to happen at the panel not included above:	very likely	quite likely	unlikely	very unlikely
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5. Is there anything you think should happen at the panel that isn't part of the process?

Yes ☐ No ☐

If 'Yes' please explain what you think should happen at the Panel that isn't part of the process:

6. In your opinion is this process the right way to deal with the offence?

Yes ☐ No ☐

7. Would you prefer that the offence was dealt with in another way?

Yes ☐ No ☐

If 'Yes' please explain why you think it should be dealt with another way?:



8. Do you think the restorative process will have an impact upon the offender?

Yes ☐ No ☐

If 'Yes' please explain whether you think it will be a positive or negative impact upon the offender:

9. For the Restorative Panel to appropriately deal with the offence, what do you think needs to happen?



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**You have now finished the Questionnaire.
THANK YOU**

**Please return it to the person that gave it to
you.**

**Thank you for taking the time to participate
in the study.**

KEEP THIS BACK PAGE IF ...

1. YOU HAVE ANY QUESTIONS ABOUT THE RESEARCH
OR WHAT YOU HAVE SAID. IF THIS IS THE CASE
PLEASE CONTACT:

Jac Armstrong - Researcher

(e: jac.armstrong@chester.ac.uk:

t: 01244 512333

mob: 07840 40437

2. if you have any concerns about the way in which this
research was conducted or wish to make any complaints
about the conduct of the researcher you can do so by
contacting the Principal Supervisor:

Dr Kathryn Dutton

Senior Lecturer in Law

The University of Chester Law School

Allen Building

Parkgate Road

Chester

CH1 4BJ

Direct Line: 01244 512333

Email: k.dutton@chester.ac.uk

Appendix E

Interview Schedule

1. Motivations for Participation
2. Panel Expectations

[Prompts: Apology, Responsibility, Reparation, Remorse, Change]

 - a. Levels of Fulfilment
3. Panel Hopes
 - a. Levels of Fulfilment
 - b. Strength of Hope
4. Panel Experience
 - a. Satisfaction
 - i. Process
 - ii. Outcome
 - iii. NB. Inter-relationships between satisfaction, expectation and hope (strengths?)
 - b. Predictability and Preparedness
 - i. Predictability
 - ii. Level of Preparedness
 - iii. Unanticipated events/issues
 - c. Views re 'nature'/ substance of participation
5. Views on overall method of resolution / RJ use
6. Issues not covered